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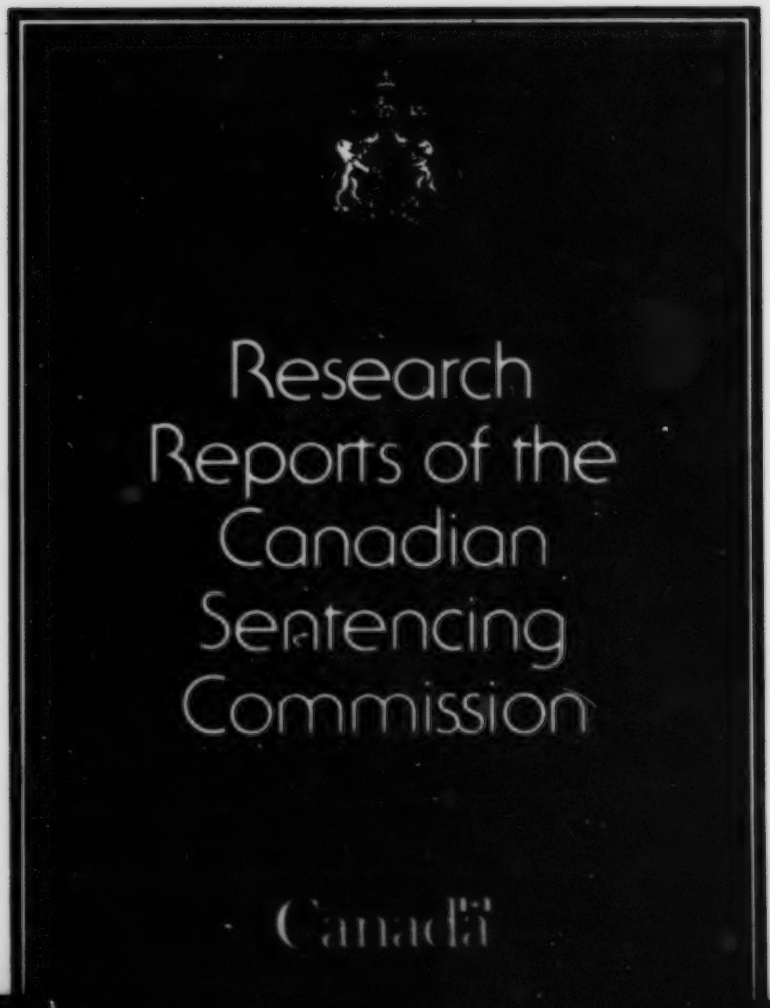
OPINIONS OF QUÉBEC INMATES REGARDING QUESTIONS RAISED BY THE MANDATE OF THE CANADIAN SENTENCING COMMISSION



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OPINIONS OF QUÉBEC INMATES REGARDING QUESTIONS RAISED BY THE MANDATE OF THE CANADIAN SENTENCING COMMISSION

Pierre Landreville, Monique Hamelin and Sylvie Gagnier

1988

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ABBREVIATIONS USED

C.S.C. Canadian Sentencing Commission

N.P.B. National Parole Board

Gr. Group or groups

Par. Parole

P.S.R. Pre-sentence Report

C.S.C. Correctional Service of Canada

M.S. Mandatory Supervision

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FOREWORD

The research project was conducted under a contract between the Canadian Sentencing Commission and Pierre Landreville of the Ecole de criminologie de l'Université de Montréal (School of Criminology, University of Montreal). The assistants were Monique Hamelin and Sylvie Gagnier, as well as Line Beauchesne, Marie-Josée Lévesque, and France Vanier. Martin Vauclair provided data collection services.

Our special thanks to the inmates[1] who agreed to meet with us and give us their views on the issues raised by the Commission's mandate. Although they received no direct benefit, and although some of them were very skeptical about the usefulness of another study, they agreed to prepare for the interviews, spend long hours with us, and share their experiences, observations, disillusions and hopes. For some of them, especially those serving very long sentences, the interviews probably reopened old wounds, brought back painful memories they were trying to forget and, most difficult of all, raised hopes that unfortunately will not all be fulfilled.

The chairpersons and other officers of inmate committees were consistently helpful in circulating information on the project and recruiting participants for the interviews. Without their invaluable cooperation, our task would have been much more difficult, if not impossible, and we thank them sincerely.

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[1]For the purposes of clarity and concision, and to preserve the anonymity of the participants, the report uses the masculine for all inmates, including incarcerated women.

Lastly, we would like to mention the cooperativeness and helpfulness of the administrators and personnel in the penal institutions that we visited. They opened their doors to us, and arranged for us to interview inmates with a minimum of the inconvenience, delay and difficulty inherent in a penitentiary environment. Our sincere thanks also to the Correctional Service of Canada, with special mention to Guy Villeneuve.

"This inquiry is as important to the inmates as the Commission."

(Group 5)

"The inquiry will yield nothing.

(Group 9)

INTRODUCTION

Under the terms of the contract, we were to visit various penal institutions in the province of Quebec and conduct interviews with groups of inmates to collect information regarding the mandate of the Canadian Sentencing Commission.

Although the members of the Commission invited all interested parties to submit briefs on the issues raised by the Commission's mandate, and although they will meet some of the parties, they also wanted the views of the individuals most affected by the penal system, i.e. its "customers". This commendable goal gave rise to various research projects, including our project in Quebec. To our knowledge, it is the first systematic effort by a Canadian criminal justice commission or committee to seek the convicts' views on system operation.

While inmates and the convicted can, like all other Canadians, submit briefs to the Commission -- (and some have) they are usually isolated, poorly organized and poorly equipped to do so. The Commission's efforts to establish two research projects involving inmates are certainly not intended to duplicate its invitation to groups and individuals to submit briefs. Without the research projects, the views of inmates and convicts in general would have been virtually unknown, as they have always been.

Although we were mandated by the Commission to collect information from inmates, in our opinion the mandate did not preclude acting as a kind of "spokesperson" for the inmates. We undertook the project on the assumption that, in addition to the specific contractual obligations to our employer (the Commission), we had equally compelling obligations to the interviewees (the inmates). These obligations included explaining to the inmates the scope and limits of the study and

the Commission's approach, ensuring their freedom to be interviewed or not at their own discretion and their right to broach issues that seemed relevant to them, reporting their views faithfully, and respecting their right to secrecy and anonymity.[1]

Our specific aim was to seek out their opinions, observations and experiences as inmates or persons otherwise affected by the penal system. While opinion and observation are always shaped by a broad variety of experience, and it is difficult - sometimes impossible - to "fragment" or break down opinions or observations into those typical of a specific group (e.g. men, workers, young men, convicted individuals), we consistently tried to emphasize the experience and viewpoint of the convict. It is for this reason that we amended the questions to be used at the interviews, and from this angle that we guided the discussions. Not only are the inmates interviewed an integral part of the broad spectrum of "ordinary citizens", they represent a specific group that has undergone a specific experience and has specific views directly related to that experience.

We decided to seek out their views by conducting group interviews on a number of points[2] of which they were usually informed in advance, and which covered the main aspects of the Commission's mandate. Obviously some of the points generated little or no interest among our respondents, some referred to areas for all practical purposes unknown to them and, in some cases, the questions were considered incomplete or totally irrelevant. This was especially true of inmates serving very long sentences (generally at least 25 years); to them the main, if not the only, question is

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[1]Unless they decided otherwise.

[2]This list of questions, which is given in Appendix E, is an adaptation of the question submitted by the Commission to individuals and organizations intending to submit briefs.

the inconceivably disproportionate length of sentences. We soon saw that the question could not be ignored. Because of its prominence at the interviews, and its obvious importance to our respondents, we devoted an entire chapter of our report to the question, although neither sentence length nor capital punishment is included in the Commission's mandate.

We met with sixteen groups of inmates, for a total of over 125 inmates of penal institutions in Quebec. Thirteen of the interviews took place in federal penitentiaries and three in Quebec custodial facilities, one of these at the Maison Tanguay women's facility[1] in Montreal. The interviews were held between February and May 1985.

As a general rule, we tried to interview previously established, structured groups of inmates. These included members of officially and legally constituted inmate committees, and informal groups of lifers. It seemed advisable to meet with fairly well-defined groups, interview inmate representatives in a variety of institutions, and concentrate on individuals who have some experience expressing themselves in group situations. To ensure quality discussion, it seemed advisable to meet with groups that had some prior experience working together. Given the very short time allotted to us, we wished to minimize the risk of dealing with people who spent the time assessing one other, groups dominated by one or two leaders, or groups of individuals who attempted to dominate one another. We believe that our method is sound, and that it enhanced the validity and reliability of the results.

Whenever researchers gather the views, opinions, or observations of people who are considered disreputable or outcasts, at the bottom of the social scale, the

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[1]This custodial facility receives nearly all the women imprisoned in Quebec, whether the sentence is under or over two years.

credibility of the results is usually questioned. It is suggested that the results are incomplete, biased, subjective, based as they are on individuals who are misinformed, selfish and sometimes ill-intentioned. "Why don't you talk to employers, managers, professionals, experts, and wardens if you really want to understand the situation? They at least understand the overall situation, and have an objective point of view." is a typical reaction.

Fortunately, the Commission did not fall into this trap but sought all points of view, from both sides of the bars. We believe that the opinions and observations of the underprivileged are no more biased or subjective than those of employers or professionals. As to the prison experience, the people who have gone through it are surely in the best position to talk about it. No police officer, lawyer, professional, or warden can tell us what convicts go through, what convicts observe.

We can certainly attest to the seriousness with which the inmates approached the interviews. Several points of view, sometimes contradictory, were expressed in most groups, demonstrating the diversity of opinion and experience. However some topics, information, and conversations were common to most groups.

After we analyzed the ideas expressed by individual groups and compared the results for the various groups, we clearly established the validity and reliability of our data and were able to discount the relative importance of uncorroborated or purely idiosyncratic statements.

The report is divided into three chapters. The first two chapters contain a description and analysis of the various viewpoints on the questions raised by the Commission's mandate. These views are usually grouped by suggested discussion

topic.[1] Chapter three is devoted to the remarks concerning a very important topic that is not included under the Commission's mandate: the 25-year minimum sentence for first-degree murder. We end with a brief summary and a conclusion that reviews the main points and lists some of the main topics that came up at most interviews. At the end of the chapter we make a number of suggestions based on the meetings themselves and the interview analysis. Attached to the report are the research method, some documents submitted by inmates interviewed, and the questionnaire used during the interviews.

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[1]Interviewees frequently expressed additional ideas, and we have included these at the end of the appropriate section.

CHAPTER 1

SENTENCES AND THE LEGAL SYSTEM

The Penal System Seen from the Inside

The groups that we met shared with us, in varying degrees of comprehensiveness, their conception of the penal system, its aims and objectives. Since these views are in no way related to the Commission's mandate, suffice it to say that they see the system as "a big machine" over which they have little control. In fact, the accused "feels completely overwhelmed by the system" (Gr. 2).

Maximum and Minimum Sentences

It seems that the majority of inmates[1] make little distinction between maximum sentence and minimum sentence. With the exception of one group (Gr. 15), when we touched upon the topic of maximum penalties, participants spontaneously equated maximum sentence to "maximum for a crime", and to "25 years eligible" (Gr. 2). "Twenty-five years" was the first sentence length given as an example by several groups (Gr. 1, 2, 5, 6, 7, 8, 9) in connection with maximum sentence. Twenty-five years was often associated with all long sentences, regardless of offence (Gr. 1, 4, 14). For one inmate, maximum sentence means "the maximum you can get in your case" (Gr. 16). He added that maximum sentences "make it possible to give sentences that set an example", especially under pressure from police forces.

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[1]We would like to remind the reader that, to ensure anonymity of those who participated in the meetings, we refer to all inmates in the masculine, even when referring to women. For the same reason, quotations are identified only by the number of the group in question; the numbers were assigned at random.

Defence lawyers rarely talk about the maximum sentences prescribed by the Criminal Code because they are mainly interested in selling their services to go after the best possible sentence. "The police are the ones who bug us about it" (Gr. 10). Although one group added: "They (defence lawyers) always scare you with that" (Gr. 16) because they want to justify their salaries.

As for the actual of sentencing, only one group (Gr. 12) believes that the maximum possible for a specific offence is given very often and, except for cases of premeditated murder (referred to by group 5), and habitual criminals (Gr. 4), the participants said that maximum sentences are used as threats, but are rarely handed out (Gr. 4, 5, 7, 8, 9, 15, 16).

On the subject of media use of maximum sentence for a given offence, most interviewees, for various reasons, think that "this is the first thing they talk about" (Gr. 5); they also believe that the results vary. One group said that "it is a way the media uses to reassure the public. This forces the guy to make a "deal" (Gr. 7). Another group thinks that the press, by making the ordinary citizen feel insecure and threatened, makes him hope for a very severe sentence to get rid of the offender (Gr. 15).

Moreover, according to the inmates, publication of maximum sentences influences the public's perception of "criminals", and the jury's (Gr. 16). The media create a negative image of the accused, and this has an impact on the jurors (Gr. 7).

Three groups (4, 10, 15) foresee, as an initial consequence of lower maximum sentences, that the new maximum would become the norm. The immediate effect would be an increase in sentence length, with the maximum gradually falling into

disuse. For group 6, the lowering of the maximum sentence for a given offence would have two important consequences. First, the accused, despite intimidation by police officers, would be ensured of not being given a sentence of more than "x" months or years. Second, during plea bargaining, if the maximum for an offence was seven years and the Crown offered five, the accused would prefer to take his chances and go to trial; as a result fewer cases would be settled with a guilty plea.

Some of the participants who equated "25 years" and "maximum sentenc" returned to the subject during the discussion of minimum sentence. The examples cited, apart from first-degree murder punishable by 25 years imprisonment (Gr. 2), are drug trafficking and carrying a weapon (Gr. 9, 16). Some added that the minimums should not exist "because it gives them (the police and the Crown) a starting point" (Gr. 16). However, the impact is softened because the minimum sentence can be negotiated (Gr. 6). The result can be either reduction of the charge, which the accused can negotiate, or reduction of the sentence if the charge cannot be reduced (Gr. 2, 6, 7, 14). In the latter case, it was said that if the charge of carrying a weapon is upheld, the sentence for the other counts is reduced during plea bargaining.

One aspect of minimum sentences leads to misuse of power by the police and the Crown. One practice is to lay a first-degree murder charge with the intention of later reducing it if the inmate agrees to turn informer, plead guilty on several charges related to separate incidents, or plead guilty on a reduced charge. (Gr. 8, 15).

It was proposed (Gr. 8, 14, 15) that minimum sentences be abolished, because they lead to abuse of power by officials within the legal system and restrict the sentencing powers of judges unduly.

Suspended Sentences

The inmates have little knowledge of legislation on suspended sentences (probation). Either the very concept has no meaning (Gr. 14), or they think the probation period is equal to the prison term they could have been given, but which was suspended (Gr. 4, 7, 12, 16). Moreover, some specified that the possible prison term should not exceed the probation period, and that "the time you spend on probation should count" (Gr. 8). The discussions reveal that the inmates are of the opinion that "everyone thinks it's got to change" (Gr. 7) and that breaking parole should not be a prerequisite to setting length of prison sentence. (Gr. 4 and 10).

Only one group really commented on this topic. To them (Gr. 6), although a suspended sentence is only given for minor offences, it can, for repeated offences become a weapon for the Crown. The individual risks being given a much longer sentence for the most recent offence because the Crown considers that he was given a chance earlier.

Pre-sentencing Process: Plea Bargain (Deal)

"Finally!" said one interviewee (Gr. 8), "a Commission willing to examine a major process in our justice system." The initial reactions to the introduction of the topic of plea bargaining speak for themselves:

> "Justice! Everything's a deal. It's a real joke!"
>
> (Group 10)

"It's a giant slot machine. You're the quarter that makes the whole thing work."

(Group 4)

"It's incredible what goes on behind the scenes."

(Group 15)

"You almost have no choice but to plead guilty."

(Group 16)

"It's the most dangerous tool around."

"If I had a million, I'd be out tomorrow."

"A million, that's an exaggeration."

(Group 8)

"It's one big racket."

(Group 5)

In our criminal justice system, a guilty plea is entered in three quarters of the cases. According to some inmates, plea bargaining takes place in 90% of cases (Gr. 15); and 95% of cases are settled before coming to trial (Gr. 10).

Why so much plea bargaining? To speed things up, (Gr. 15), to save society the cost that would be involved if all cases went to trial; if they did, the system would collapse because the number of trials would increase by at least 50% (Gr. 6, 10, 15). Moreover, most charges are not supported by all the evidence needed to obtain a guilty verdict. Even with shaky evidence, the original charge leads to a guilty verdict on a reduced charge (Gr. 8 and 10). Finally, defence lawyers save time, and make more money by taking on more clients (Gr. 14).

What does the accused want to negotiate? The most important thing is reducing the sentence. He can do this in various ways. He can become an informant, denouncing accomplices or giving information on other cases (Gr. 7, 9, 15). "You make sure you know what to tell if you're caught" (Gr. 9). "The informer gets a fantastic deal" (Gr. 15). Another way is to agree to plead guilty on several different charges, even if you were not involved. Some said that "If you do that, you're screwed" (Gr. 4), because the longer record (Gr. 5) may influence the judge. To negotiate concurrent sentences is advantageous in the short term, but it stays on your record. During classification in the penitentiary it has a negative impact (Gr. 5) because they never consider the fact that an inmate may plead guilty falsely to several charges, in order to have his sentence reduced. The Canadian Parole Board does not take this aspect into account when reviewing a parole application.

For the inmate, another aspect of negotiation is reducing the number of multiple charges laid for a single incident. Police officers "add extra ones" (Gr. 4). It seems that the police and the Crown "apply" the heaviest charge possible to force the accused to agree to a deal on a reduced charge (Gr. 15). For trial, it is very important to reduce the number of charges as much as possible to keep record length down and avoid paranoia in the public and, indirectly, in the judge and the members of the jury.

Uncertainty about the outcome of the trial generates such fear among the accused that a person who is innocent of the crime of which he is charged will choose to plead guilty and be given a predictable two-year sentence rather than go to trial and risk getting the ten years with which he has been threatened (Gr. 6). The trial poses a new problem:

"Why do you get more if you go to trial? Revenge! Basically, they tell you that it was up to you to plead guilty."

(Group 2)

For several interviewees, refusing a suggested deal is unthinkable because:

"If you go (to trial), you cost the government money, and you pay for it."

(Group 6)

" If you go to trial, you pay for it; whatever you cost society, you pay for it."

(Group 5)

They also said that an accused who knows he is guilty still prefers to take five years rather than go to trial and risk getting much more, even if he knows that the evidence against him is not very solid (Gr. 6). Plea bargaining benefits not only the accused; the police and the Crown can convict more people who are charged without having to worry about gathering truly conclusive evidence (Gr. 6).

Now that we have touched on some of the reasons given to explain the practice, let us move on to the factors that can influence the negotiation that results in a guilty plea. The first and most important is money.

"If I haven't got the bread, it's too bad for me. A deal worth the trouble is expensive...".

(Group 12)

"If you don't have any money, man..."

"The more you give, the better off you are "

(Group 16)

"If you have the best lawyer, if you have $50,000, you'll get six months in prison. If you have legal aid, you'll do 12 years."

"$10,000 for ten years eligible (for parole), $50,000 and I'd already be out."

(Group 15)

"If you have money, you get a deal. No money, no deal."

(Group 10)

"From '74 to '75, it cost me $7,000 in judges and lawyers for me to stay outside."

(Group 14)

"The law exists for the rich. It's always the poor who end up in prison."

(Group 7)

"Money, that's the criterion."

"For me, justice doesn't exist. Far from it."

"Those who have someone working behind the scenes are better off."

(Group 5)

Satisfactory plea bargaining for a serious offence costs the accused $50,000. "Even if he is guilty, he can be acquitted" (Gr. 6). Another said that his lawyer asked him for $5,000 to get a first-degree murder charge reduced to involuntary manslaughter (Gr. 14). He didn't have the money and could not accept the offer... Whether the case is minor or major, money is always involved, it is that much easier to negotiate for a minor offence because there is less police pressure (Gr. 6).

But does this money not have a positive effect? Does it not produce justice? "If the guy has $200,000 on the outside, they keep him inside as long as possible so

that he will fork over the money" (Gr. 16). "They (defence lawyers) try to fleece us completely, and they sometimes take payment in drugs (Gr. 14) for services rendered."

Apart from money, which seems to have a positive impact, mainly during negotiation of a guilty plea, the media, knowledge of the system and preventive detention are also factors to be considered.

Because of widespread publicity surrounding his case, one inmate said that he was never offered a deal (Gr. 3). By stirring up public opinion, the media can deprive the accused of a possible deal.

"The guy who knows nothing, he may just as well plead guilty right away" (Gr. 12). Someone who knows nothing, someone who is there for a first offence, doesn't know how to assess proposals from the police, the defence or the Crown. "It is the lawyer who comes to see you; you lean on him because you're confused" (Gr. 1). The defence lawyer then takes control and often takes advantage of the inexperienced (Gr. 1). Not only does he risk "getting shafted" (Gr. 6), but he may not necessarily think that the law sanctions such practices. In fact, even persons long accustomed to plea bargaining believed that the practice was illegal (Gr. 14).

The inmates said, that the difficult conditions at Parthenais push them to plead guilty.

> "At Parthenais, 95% of the guys plead guilty."
>
> "It's a machine to make you plead guilty. You get fed up, and you plead guilty."
>
> "The police officers know about it."
>
> (Group 2)

"When you've been at Parthenais for a year, (you say) O.K."

(Group 16)

"At Parthenais, you're treated worse than someone who is guilty, and this has an obvious impact on the sentence (even the pre-sentence report): a person is obliged to plead guilty sooner, to accept things he would not accept normally."

(Group 1)

Moreover, the time spent in preventive detention does not count when the sentence is handed down (Gr. 5, 16).

"Your time doesn't count, so you plead guilty sooner."

"At the preliminary inquiry, you are better to ask for a deal right away so you don't have to hang around at Parthenais."

(Group 5)

Preventive detention has a negative impact on the accused, who tends to agree to a deal right away, a deal that may be very costly in the long run.

To successfully negotiate a guilty plea for, the accused needs financial resources, a relatively light record, little attention from the media, and a deal that is to his advantage but does not appear excessively so to the prosecution.

From the inmate's point of view, what are the roles of the various participants in plea bargaining and sentence negotiation? We will discuss the roles of the accused, the police, the defence counsel, the Crown prosecutor and the judge. Teams are formed, with the accused and the defence counsel on one side and the police officers, the Crown and the judge on the other (Gr. 5); but player solidarity is not

unshakable. One comment indicates, interestingly enough, that defence counsel is trusted least. "You are never sure of your lawyer" (Gr. 5).

The Accused

"It is not the accused who asks for a deal, unless he is experienced."

(Group 8)

"He is the one who pays."

(Group 15)

When more than one person is accused, the first step in bargaining for a guilty plea and the sentence is the deal between the partners (Gr. 4, 12). Other than providing money (a topic already discussed at length), the accused plays a rather passive role, either accepting or rejecting the proposed agreement (Gr. 5). In some cases involving major offences (Gr. 14) or experienced offenders (Gr. 8), the accused plays an active role. For less serious offences, and even during important cases, the accused rarely takes part in the negotiation (Gr. 4, 5, 7, 14). While the lawyers negotiate, the accused wait in a room set aside for them. The wait puts great pressure on the accused (Gr. 4).

"The game is played while you're not even there. They've got you by the balls."

(Group 5)

Some even think that the only reason the accused is present at the trial is to reassure the public that the trial is properly conducted (Gr. 4). The bargaining process leads to a biased view of the legal system:

"You go into court, you know your sentence, but it's like a play. Anyway, everything is arranged with the judge beforehand."

(Group 8)

Defence Counsel

In the opinion of the inmates, the defence is primarily a messenger between the Crown, which states the sentence it will ask for if the client pleads guilty, and the accused. Occasionally, counsel for the defence can negotiate with the police (Gr. 6, 8, 10, 15). If one has enough money, the defence may "arrange" for a specific Crown prosecutor or judge (Gr. 5), but it is mainly the police who do this kind of "shopping" (Gr. 2, 6, 10). Defence counsel's need to maintain cordial relations with the Crown, the police and the judge is also considered crucial to bargaining for the sentence (Gr. 10, 12, 14).

The importance of defence counsel's role as intermediary is directly related to how much money he can get from the accused. The inmates realize that defence counsel must work to ensure that the inmate serves the least possible time. The partnership is held together by one thing: money.

The interviewees said that the energy invested in a case depends on the size of the accused's bankroll, and that the sums required are often enormous. Interviewees repeatedly mentioned sums ranging from $5,000 to $50,000 (Gr. 3, 4, 8, 12, 14, 15).

"Give me $25,000, you'll get five years;, for $10,000 you'll get 10 years."

(Group 15)

"You're going to get eight years, but go get me $10,000. He robbed a bank to get it, and he got eight years."

(Group 8)

His role is "...to make sure you don't do too much time."

(Group 6)

"This is what you risk; I can get you five years if you give me so much."

(Group 16)

"He (counsel) sees a big dollar sign as soon as he sees you."

(Group 16)

"He's a confidant."

(Group 12)

"The first thing he says to you is: 'How much do you have?'"

"They know we need them. They are like a drop of water in the desert. If you have money, O.K., if not, you go to prison."

"It's a person's financial situation that counts."

"He'll throw you inside when you can't get pay any more."

"The sentence depends on the money."

"The defence could not care less about you."

"He (the defence) will get you one or two (years) depending on the money."

"When the guy is left without a penny, the lawyer no longer wants to go to trial and he makes a deal."

"Plead guilty, I can get you three years; otherwise it's seven years. They all deal."

(Group 2)

"If your lawyer has a big case at 10 o'clock, and you don't have any money, your trial is at a quarter to ten."

(Group 12)

After extracting as much money as they can from the accused, some lawyers contact his spouse, brothers or friends and ask for more money, to better defend the "loved one" (Gr. 3, 10).

Would legal aid lawyers have a better relationship with the accused? Generally speaking, they are seen as unwilling to work hard (Gr. 4, 8, 9); due to their limited experience, they are unable to provide a good defence (Gr. 5, 6).

"They don't want to go to trial."

"They're not interested in seeing justice upheld."

"He makes his money by having a large number of clients."

(Group 2)

Occasionally "There are some good ones. Especially young ones who want to make a name for themselves" (Gr. 1, 12). And, "if you give him another $200 under the table, he will work hard and do a good job" (Gr. 1, 12). "Legal aid - one of the few ways of getting a satisfactory defence" (Gr. 6).

The other way for the accused to obtain a "good bargain" is for him to plead guilty to a number of charges related to different offences, even if he had nothing to do with them (Gr. 8). The problems arise after sentence is handed down: as discussed above, the correctional service and the N.P.B. take no account of the practice for purposes of assessment. Record length also has a negative impact in case of a repeat offence.

If a wealthier client is ensured a better bargain, how, one may ask, does defence counsel justify this? The inmates told us that defence counsels hand one or two clients over to the police and the Crown to save a wealthier client (Gr. 4, 5, 6, 8, 9, 12, 14, 15, 16).

"I'll give you the poorer one if you treat the richer one well."

(Group 4)

"I'll give you that one. You have 90 days to appeal. I'll sell you that one, and you save my big client."

(Group 5)

"Spring the one who has money, and I'll give you the other ones who don't have any."

(Group 9)

"Give me that one, and I'll let the other two go."

"They deal in human beings."

(Group 16)

The trading of "good" cases between the defence and the Crown occurs either because it is lucrative or because the police exert pressure on defence counsel (Gr. 4, 15, 16).

"At a given time, the "pigs" grab him (defence counsel) by the balls. Sell us so and so..."

(Group 16)

Especially when a serious charge (e.g. murder) is laid, where conviction would involve a very long sentence, the inmates do not feel qualified to make decisions if

counsel advises them to refuse the Crown's offer and go to trial (Gr. 1, 8, 11, 13, 15). Because it is every lawyer's dream to win a murder case:

"He uses you for practice."

"I have a hell of a defence, believe me! I knew nothing, so I said yes."

(Group 15)

Moreover, in all types of cases, both private and legal aid lawyers pressure their clients to accept whatever is proposed. This is when the defence brings up the maximum sentence that the accused can get (Gr. 6, 8).

"Don't go before a jury, it is dangerous to defend yourself."

"Do what I say or get another lawyer."

(Group 8)

The accused who refuses to take this "offer too good to refuse" suffers a number of consequences. The police increase the number of charges and/or pressures the judge to give the accused a heavy sentence (Gr. 7, 8). He may be acquitted on one charge, but he pays for it on one of the others, and pays dearly.

"If you win one, you lose the other. This increases your chance of being convicted."

(Group 7)

"The judge does not know the accused. He meets with the police officers, he never even sees you, and then he gives you a sentence to set an example."

(Group 8)

As a result, several groups expressed the need to be protected by a third party even from their lawyers (Gr. 1, 7, 15).

Police Officers and the Crown Attorney

According to the interviewees, the roles of the police and the Crown are closely linked during plea bargaining. For this reason, we will discuss these roles together, pointing out the differences as we go.

The inmates say that police officers "set the ball in motion." At the time of arrest, they may charge the accused (Gr. 4, 9). It is always the police officers who provide, even fabricate, the evidence for the Crown (Gr. 1, 6, 7, 8, 9, 10, 16). In exchange for information, the police are prepared to negotiate the charges (Gr. 8, 9, 10, 14) or even a promise of concurrent rather than consecutive sentences (Gr. 14).

"They said to me, 'you see no one until you talk'."

(Group 4)

This cooperative effort facilitates the work of the police considerably. Informing saves society the cost of a trial, and piles up information with which to convict other people (Gr. 9).

This team (i.e. the police and the Crown) negotiates only when there is little evidence or if the evidence is circumstantial (Gr. 7, 9, 10, 15). The extent of police pressure on the Crown, the defence, or the spouse of the accused depends on the case. Police officers even suggest sentence length (Gr. 4, 6, 10, 14, 16).

The Crown plays an active role in plea bargaining. It holds discussions with the defence and informs the judge of the agreement reached between the two parties. However, the police are also a party to the negotiation (Gr. 8), and if they do not ratify the agreement, the lawyers modify their positions (Gr. 6, 9).

According to the inmates, both defence counsel and the Crown derive financial benefit from plea bargaining (Gr. 7, 8, 10, 16).

> "Defence counsel says to the accused, 'I'll get you four years if you give me $5,000 for the Crown prosecutor.'"
>
> (Group 16)

> "Furthermore, the Crown prosecutor takes money."
>
> (Group 7)

During trial, the police are very much in evidence; they team up with the Crown (Gr. 2, 4, 6, 14). The team was formed following numerous acquittals on technicalities in the past. That was when:

> "The police got organized."
>
> "They sit down with the Crown and then they plan the case and produce a convict..."
>
> (Group 2)

Let us now look at what inmates say about the police and Crown prosecutors.

> "If the investigators don't agree, no deal is possible."
>
> (Group 9)

"The police decide on the deal."

"The police manipulate the system."

"The police officers told me...'we have our 'connections' with the Crown'."

"The police officers were with the judge in his chambers. You don't know what they said."

(Group 8)

"The 'pigs' run the game, they decide how much you get."

(Group 4)

"The Crown is completely controlled by the police."

"The police sit behind (the Crown prosecutor at the trial), and tell them exactly what to say..."

(Group 10)

"'Take these six charges and you'll get so much' (the police officers said)."

(Group 8)

"If you don't tell us who your partner was you'll do so much..."

"The Judge was there, the investigator, the Crown, the defence, everybody. They asked me my partner's name and I refused to give it. They said: 'O.K. then, you're going to get life.' And that's what happened."

(Group 8)

"How come police officers have the power to have the role changed?"

"For all kinds of reasons, lower court judges are subject to the police."

(Group 2)

"A reduced sentence if I don't testify for other accused persons -- 30 months instead of the 7 years my partners got."

(Group 8)

"The police are in control."

"Police officers exert enormous pressure on the Crown and the judges."

"Defence counsel got nailed by the police."

(Group 7)

"Take your four other charges and you will get a reduced sentence."

"It adds importance to your case and means a promotion for him (the police officer)."

"Also, the Crown prosecutor takes money."

(Group 7)

"The Crown saves the taxpayers money if it negotiates rather than going to trial."

(Group 8)

With regard to multiple charges, either for the same or different offences, police action is based on a number of motives.

The practice leaves the door open to the Crown: in case of dissatisfaction with the sentence, or refusal by the accused to cooperate, the Crown may proceed on each charge individually (Gr. 3, 9, 15). Multiple charges for different offences force the accused to negotiate, while the Crown and the police are not obliged to produce much evidence; in any case, the evidence is often only circumstantial (Gr. 9, 10, 15). In the short term the advantages of pleading guilty on several charges of which the accused is not guilty may seem appealing (concurrent and slightly lighter sentences than if a trial were held); it is not long before the drawbacks become apparent. All assessments by the Correctional Service and the N.P.B. are based on the record of the accused; the longer the list of offences, the less likely his rehabilitation potential will

be considered good (Gr. 1, 5). Moreover, for repeat offenders, bail is more difficult to obtain and the judge finds the situation that much more "horrible" (Gr. 1, 6, 9, 15, 16). As for charges for which there is no conviction, the police can use them later. The inmates propose that all charges that are not proceeded with be deleted from the record (Gr. 16).

Jurors are also influenced by the practice of laying multiple charges: "...so many charges, he must be guilty of at least one." When the trial is before a judge only, there are fewer charges because judges are less easily swayed by this kind of pressure (Gr. 6). Others do not think it is that straightforward. To them, the police lay several charges, for the same or different offences, because by doing so "the police are surer of getting the guy nailed, because it raises doubts in the judge's mind" (Gr. 1, 5, 9, 14, 16). This approach forces the accused to agree to the Crown's proposal. Even if the Crown appears to negotiate and reduces the number of charges, he still gets what he wants: to put the person away for as long as possible.

"They always try to add on more - to scare you."

(Group 5)

Another reason the police lay multiple charges for different offences is to improve their very low figures for solved cases, (Gr. 1, 3, 7, 8, 9, 15, 16).

"The police try to settle as many cases as possible."

(Group 3)

"It makes a better impression."

"A guilty person must to be found."

(Group 16)

"An aberration."

"There's a catch in it; everything ought to be brought together under a single charge."

"It makes things easy for the prosecution."

(Group 9)

"It's good for their statistics" to lay ten robbery charges when they arrest you for one."

(Group 15)

The Judge

"Some judges don't want to get involved."

(Group 9)

"The judge is not always involved."

"He has the last word. He couldn't care less about the defence or the Crown."

"Even judges are bought in important cases. I myself know this happens frequently."

(Group 16)

"Anything can be bought, even a judge."

"He can be blackmailed."

(Group 9)

"As long as everyone is satisfied" (the judge approves the agreement between the parties).

(Group 6)

"Pleading guilty is like throwing dice."

"At ten in the morning, they said to me: "You're on at a quarter to eleven. You're going to get ten years; after four years you'll be out." "They had just made me plead guilty, and I got life with eligibility for parole after ten years."

"The police, the Crown and the defence, are a bunch of double-crossers! They came to see me in my cell and said, 'five to seven years, will you take it?' The defence said the judge was willing. I said 'yes, I'll take it.' The next day at ten o'clock, they made me plead guilty and then they adjourned. It only took 15 minutes." "The police, the Crown, the defence and the judge met. Defence told me everything was O.K., and he left. The court reconvened and sentenced me to 22 years in the penitentiary."

"They'll make you a deal to get you to plead guilty. Then, too bad."

"Don't forget that the judge was once defence counsel or Crown attorney. It's all the same clique. They have their own little community."

(Group 7)

"When you go into court, you know your sentence, but once you're there it's like a play. And yet everything is arranged with the judge beforehand."

(Group 8)

"The defence says to the accused, 'Stay at Parthenais, I want to wait for 'my' judge'."

"If you stay at Parthenais you'll get six years, otherwise you'll get 25."

"It's very rare that the judge doesn't know what's going on."

"Sometimes, the judge is held by the balls, the police have something on him."

(Group 15)

"Why does a judge agree? Because it's in his interest to do so."

"A judge who is incorruptible comes down hard on the guys. So a guy says 'there's no justice, I had the wrong judge.'"

(Group 10)

Judges can't be impartial. "He virtually takes revenge on you. He has problems in his life too."

(Group 5)

The inmates' views are divided on the judge's role throughout the pre-sentencing procedure. However, it is generally agreed that he is almost always informed of agreements between the defence and its client, and the Crown and the police. He rarely plays an active part in negotiating the agreement.

Some think that the judge simply signs the agreement (Gr. 6, 9, 14). Others believe that the judge's sentencing authority can be a problem, either because the judge does not abide by the charges to which the accused agreed to plead guilty (Gr. 7, 8, 9, 15, 16), or because this "play", put on for the benefit of the public, gives an artificial image of justice. The judge knows what is going on, but pretends he does not (Gr. 8, 12).

"Shopping around" for a judge favourable to the defence, is also part of the negotiation (Gr. 5, 15, 16). The practice is rare because it requires a very knowledgeable, experienced lawyer and a well-heeled accused. (Gr. 6). Moreover, police officers do the same thing. After consulting the roll, they arrange to forego preliminary inquiry in order to appear before a specific judge who suits them." (Gr. 2, 6).

The probity of judges is rarely questioned, although in some cases the police may manipulate judges (Gr. 2, 5) and, on other occasions, some judges derive financial gain from the plea and sentence bargaining (Gr. 7, 9, 15, 16).

Some interviewees said that the judge sees to it that his decisions cannot be appealed by the interested parties, because that would damage his reputation as a judge (Gr. 6).

It was proposed (Gr. 5) that, to mitigate the problems that arise when sentence is pronounced, the judge be party to the negotiation. In this way, the persons charged would know where they stand. One inmate said, "You could know in advance whether or not the judge agrees. If he deliberates for two weeks, then you know he does not agree" (Gr. 15).

Should Plea Bargaining be Abolished or Regulated?

"Hard to decide."

(Group 5)

"If it were not a kind of blackmail, it would be O.K."

"Deals would be made under the table, it's impossible it."

(Group 8)

"It's impossible to abolish it; I don't trust them enough; it makes too much money for the lawyers."

(Group 15)

"If the system were different, there would be no need for deals." "If everybody went before a jury, the system would crumble! It's inevitable."

"It won't change because society as a whole would have to change. The power of discretion would simply shift."

(Group 2)

"It's good."

"It's good for someone with experience. You have to find something that you can use to negotiate with the police officers. A quantity of weapons for example."

"There must be regulation... "for a first sentence; there should be a neutral person, a resource person to come and explain what you are risking and to negotiate with you."

"The accused should have the right to two witnesses during the deal."

"It should be respected by the judge." "There should be a paper signed on the deal, on all that."

(Group 7)

"If there were no deals, we'd be at Parthenais a long time."

"If I had gone to trial, I would have gotten a lot more, I would have served more time."

"It's better with the present system, but you need money."

(Group 5)

"There's no use abolishing it because there is always a way, behind the scenes, to arrange to pay someone."

"The day it's done by computer, it will be perfect; you can't pay a computer."

(Group 10)

"The judge couldn't care less whether the evidence is true or false!"

(Group 12)

Only one group (Gr. 14) is unanimously in favour of abolishing plea bargaining. They believe that defence lawyers should work to win their cases. To avoid higher costs, salaries for defence lawyers were suggested.

According to the other groups, the impossibility of abolishing plea bargaining and sentence negotiation is due to the fact that the procedure serves both the legal system and some accused. To the legal system, abolition of bargaining would mean too great an increase in the number of trials, with an increase in the cost to government and society. To the inmates, longer proceedings would mean higher legal fees, longer preventive detention, and uncertainty as to the outcome of the trial. For all these reasons they favour retention of the current procedure. Consequently, if plea and sentence bargaining were officially abolished, the practice would continue at least in its present form; therefore it is better to keep it and regulate its use (Gr. 1, 2, 6, 9, 10).

Some noted that abolition might not lengthen the rolls because the police would be obliged to demonstrate more skill in preparing evidence. The final result could be that fewer charges would be brought to court. However, if evidence is better, bail will be higher (Gr. 6).

Another consequence of abolishing plea bargaining concerns the pressure exercised by police officers on judges. The accused would be deprived of the means to counter the weight usually given to police evidence (Gr. 12).

Under certain conditions, abolition would be acceptable to some people. First, sentences should be shorter (Gr. 2, 6, 15) and disparity between sentences less. Second, police pressure should not be allowed, nor should police shows of force that create a climate of fear in the courtroom and paint a terrifying image of the accused (i.e. police officers with sub-machine guns at courtroom doors) (Gr. 6).

To mitigate the excesses caused by the entire pre-sentencing process, the various groups of inmates submitted a series of proposals that we list here.

1. "For a first sentence, there should be a neutral person, a resource person to come and explain what you are risking and negotiate with you."

(Group 7)

2. "The accused should have the right to witnesses during the deal."

(Groups 7, 8)

3. The accused should be present throughout plea bargaining, and be assisted by someone with practical experience in negotiation.

(Group 12)

4. All murder cases should go before a jury, so that the accused is ensured freedom of speech and the right to appeal.

(Group 1)

5. The police should be excluded from the negotiation.

(Groups 1, 8)

6. All parties should be present.

(Groups 6, 8)

7. The judge should act as arbitrator to limit the powers of the police.

(Group 8)

The presence of the judge would enable the accused to know exactly what he is liable to get by agreeing to plead guilty.

(Group 5)

8. The process should be public.

(Group 8)

9. The agreement should be in writing.

(Group 8)

10. Three judges should preside over the negotiation.

(Group 8)

11. There should be a right of appeal, even in cases where a guilty plea was entered.

(Group 8)

Appeal Procedures

"The judge said, 'You can always appeal'."

(Group 6)

"If you don't have any money, you're sunk because legal aid never wants to appeal."

(Group 8)

"Most lawyers I have known are not very keen on it. They put many doubts in your mind."

"Even if you have money."

(Group 12)

"They (defense lawyers) urge you to appeal, for the money."

"I wouldn't be surprised if they purposely made legal errors so they can appeal and make more money."

(Group 7)

"They are there to confirm your conviction."

(Group 15)

The appeal procedures are long, and if the guilty verdict is overturned, "You will still have done two years, even if you're not guilty."

(Group 2)

"If you have a deal, they deliberately come down on you hard!"

(Group 12)

Appeal procedures may be useful for remedying some injustices, and they offer some hope to those sentenced to 25 years in prison. According to some interviewees, the court of appeal is also less subject to police pressure (Gr. 9, 10). However, the question of money came up again, as it did when we were discussing plea bargaining (Gr. 4, 6, 7, 8, 11, 14, 15). To group 12, even if the financial question is not a problem, the defence is not skilled in handling post-sentencing proceedings. Group 1 is of the opinion that, since those who have been sentenced are now penniless, this aspect is no longer a factor; they add that legal aid decides unilaterally whether there are grounds for appeal, and never gives the reason.

The inmates gave us a series of proposals aimed at solving the problems they run into when trying to assert their right to appeal. The following summarizes their views, and requires no further comment.

<u>It is proposed</u>:

1. that a resource person advise the accused or the newly sentenced of his right to appeal;

(Group 1)

2. that each inmate who intends to sign a waiver of appeal, be specifically informed about the document he is signing and the future implications of this action;

(Group 1)

3. that the 30-day limit for asserting the right to appeal be increased, as it is clearly insufficient;

(Groups 1, 11, 14, 15)

4. that the period between the beginning of proceedings and the court's answer be shortened. The right to appeal would take on real meaning, even for shorter sentences;

(Groups 11, 16)

5. that imprisonment following the first conviction be taken into account if the sentence is amended;

(Groups 1, 4, 8)

6. that, even in cases where the accused pleads guilty, his right to appeal not be denied or rendered virtually inoperative;

(Group 1)

7. that, in murder cases, the possibility of review after a few years be automatic, because the inmate might be able to make new points in his defence;

(Group 1)

8. that it be made impossible to increase the sentence to which an accused is liable;

(Group 8)

9. that the Crown's right of appeal be abolished; and

(Group 8, 14)

10. that, even in cases of unanimous rejection by the Court of Appeal, the inmate have the right to go to the Supreme Court if he so wishes.

(Group 8)

The Media

"...blacken your reputation before the trial even begins."

(Group 6)

"When they want to increase sales they cream you."

"If you read the newspaper, you know right away if you're going to be convicted or not."

(Group 16)

"The more they put you down, the more papers they sell." Owning a revolver becomes "armed to the teeth."

(Group 4)

"The outside world never thinks that we do our full time. The papers call it parole when it's really mandatory supervision."

(Group 3)

"Goddamn journalists. They have too much power. They're at the scene even before the police."

(Group 12)

"The guy who gets publicity gets nailed. Another guy, same offence, no publicity, gets a short sentence."

"They paint a picture of the guy and, when it's time for sentencing, it has an effect on the judge."

(Group 3)

"Police officers put pressure on the media."

"They realize that the media are important to winning a case. They have taken over the information system."

"75% (of journalists) work for the police."

"They are in the pay of police officers. They call the police and ask what they can do. They're told that if they rework such and such it would be a great help."

(Group 2)

"Journalists follow the lead of the police officers."

(Group 8)

Proposal

"There should be a non-publication order until and unless a person is declared guilty after trial." "Reporters should respect the facts. They have no right to make personal comments or comments on behalf of the police."

(Groups 2, 15, 16)

As one can see, relations between the media and the inmates are not very good. The inmates feel they are being used to help sell a product. The media presentation paints an incomplete, negative and horrifying picture of the accused (Gr. 4, 5, 7, 10, 14, 16). They are convicted before the decision is rendered (Gr. 11, 15).

The inmates believe that publication of the maximum sentences to which they are liable creates an image of them as dangerous men (Gr. 5, 6, 7, 8, 10, 14, 15). Since the public tends to judge the seriousness of an offence by the possible length of the sentence, the "public thinks that, in general, we are all rotten" (Gr. 8). When the public learns the disparity between the maximum sentence and the actual sentence, there is general dissatisfaction, loss of confidence in the legal system and a widespread feeling of insecurity (Gr. 5, 6, 7).

The police are the source of journalists' information on offences (Gr. 2, 3, 8). Evidence favourable to the Crown is published, and evidence in favour of the defence is ignored (Gr. 2).

The whole show in the newspapers forces the accused to agree to plea bargaining (Gr. 7) and, especially, influences the judge and jury (Gr. 3, 5, 6, 7, 11, 14, 15).

The publicity surrounding a case further erodes the defence's bargaining power, in some cases even eradicating it altogether (Gr. 3). Publicity can lead to great disparity between sentences: an offence reported in the media gets a longer sentence than one it ignores (Gr. 1, 3, 16). Depending on money and the lawyer's experience, the media can ignore even a serious case (Gr. 1).

Sensational articles are used in court by the Crown (Gr. 5, 14) and in the C.S.C. by the classification officers (Gr. 1).

Disparity Between Sentences

The list of reasons given to explain why there is disparity between sentences is a long one. There is the current maximum sentence structure; then there are money and informing, criminal record, circumstances surrounding the offence, police pressure on the plea bargaining process and on the Correctional Service of Canada and the N.P.B., public opinion. and regional disparity.

Maximum Sentences

Even if maximum sentences are rarely given, they allow too broad a range in sentences for a given offence: "There should be more consistent sentences" (Gr. 1, 7, 10, 15). Maximum sentence for second-degree murder can be 18 or 20 years, sometimes even 25, the same as for first-degree murder (Gr. 6). Some inmates fear an increase in general sentence length if the differences are reduced (Gr. 4, 10, 15); others believe it would be better to make maximum sentences more consistent with average sentences actually given.

Money

"The size of the (accused's) wad is the main factor" in creating the disparity among sentences (Gr. 10). Because the consequences of financial position on plea bargaining and sentence negotiation have already been discussed at length, we will not repeat them here. However, we wish to emphasize that the inmates themselves made the connection.

Criminal Record and Circumstances Surrounding the Offence

Few interviewees can understand how there can be disparity based on criminal record. In general, the inmates agree that extenuating circumstances do have an effect on the sentence, but they do not understand how, once they have paid their debt to society, their record can still follow them. In other words, according to one of them, the individual is punished more than once for the same offence (Gr. 14).

"The criminal record should never be taken into account: I've paid my bill."

(Group 2)

Police Pressure

The police promote informing by promising reduced sentences to those who cooperate with the system. Moreover, the weight of a police officer's word with the N.P.B. is so great that the Board delays approval of parole on mere notification by police officers. The information the police give the media stirs up public opinion unduly against the accused. All these factors lead to sentence disparity.

Regional Disparity

"Universal justice is a utopian concept."

(Group 9)

In a small town "the judge has seen less and, when he has an audience, he puts on a show."

(Group 8)

"Where is justice? Are you guiltier because you live in the suburbs?"

"To have a case transferred, you must plead guilty unless you can prove that the jury is prejudiced against you."

"You can't always have your charges transferred if the Crown doesn't want to. Your sentence will be used to set an example."

(Group 7)

Regional disparity between sentences is considered inadmissible (Gr. 6, 7, 8, 9, 15, 16) although, as one inmate put it so nicely, "Universal justice is a utopian

concept" (Gr. 9). In any case, to reduce this type of disparity, the accused should have the choice of having a case transferred from a small centre to a larger city. Similarly, the accused should not be required to plead guilty on additional charges to have his case transferred to another city (Gr. 7).

Miscellaneous

Pre-sentence Report

"It's good for someone who has no record."

(Group 8)

"It may be good or it may work against you. It depends. It's good if you have done something good outside."

(Group 16)

"The judge will interpret it in his own way."

(Group 5)

"Guys facing their first sentence don't know what is going on. Your lawyer should tell you that you can have one (report)."

"He (defence counsel) dangles the pre-sentence report because he wants a deal."

"It doesn't count much."

(Group 7)

"If I based myself on that (pre-sentence report), I would give you a suspended sentence; but I'm not taking it into account - 3 years."

(Group 15)

"It serves the interests of those who are the best off."

(Group 9)

The pre-sentence report (P.S.R.) may be useful, but it is a double-edged sword (Gr. 1, 4, 5, 8, 9, 12, 16). For a first sentence, those who have a family, and outside support, benefit from this investigation; but those who have no one are viewed even more negatively. Police pressure is applied here as well, and the police report carries more weight with the judge (Gr. 1, 6, 7, 15). The lawyers, for whom plea bargaining is more lucrative than a trial, rarely mention this option to the accused.

Just like with plea bargaining, the judge has the last word, and can ignore the P.S.R. if he finds it too lenient (Gr. 7).

Overcrowding

According to the inmates, judges do not take the overcrowding in provincial custodial facilities into account when pronouncing sentence (Gr. 4, 5, 6, 8. 16). Otherwise, a judge would not give a sentence of two years and a day to make sure that the accused does his time. Some individuals even prefer penitentiary because it is easier to do time there. The interviewees agree that the choice is very difficult, because a federal record is much more serious (Gr. 1, 4, 6, 7, 15).

The Jury

"A jury is less dangerous than a judge alone."

"It is very dangerous to appear before judge and jury. The jurors know nothing of the law. They are not very qualified."

"They are often taken in. False evidence is introduced, there is nothing easier than to make people think that you're guilty."

"For example, they find cocaine at your place. You never had any; where did it come from? Eighteen witnesses, all police officers."

"The judge urges the jurors to declare you guilty."

(Group 16)

"The jury should have something to say about the length of the sentence."

(Group 8)

In the past, "The jury said, 'there is some doubt', and they did not like to send someone to the scaffold unless they were sure."

"Now, they say to themselves, 'What if it was him. In four or five years he'll be out'."

(Group 15)

Dissatisfaction with trial by jury is so great that groups 1, 2, 4, 5, 8, 11, 15, and 16 thought it necessary to tell us about problems they encountered, or suggest possible solutions.

The lack of knowledge and training of jurors is seen as the Achilles' heel of the system. Because they believe in justice, jurors have an unshakable confidence in the police, the Crown, judges, and often even media. The latter seek only to dramatize and even falsify the circumstances surrounding an offence so as to sell their product. Moreover, if the accused testifies on his own behalf, his criminal record is revealed, which does him considerable harm in the eyes of the judge and the jury.

Proposals

The various proposals may be summarized as follows:

1. If the jury system is not abolished, it is proposed that the accused have a choice between judge only; judge and jury; jury of three or five judges; or judge and jury, with the jury made up of professionals in a position to take a critical view of the legal system (Groups 8, 11, 15).

2. It is proposed that "the jury should have a say on the sentence length" (Group 8).

CHAPTER 2

METHODS OF RELEASE

Parole

"A complete failure."

(Group 9)

"From then on things have gone badly in the prisons."

(Group 5)

"It is a reward system."

(Groups 4, 8)

"It's a real joke."

(Group 12)

"It's a totalitarian system, you have no right to appeal. They send you back to the penitentiary on mere suspicion."

(Group 2)

"The only organization in Canada that is above the law."

(Group 7)

"You won't find many here in favour of it, therefore parole has reached its goal: you keep quiet inside the walls. In their own minds, the guys always hope. The power of parole is to create hope in your mind."

"If they really wanted to get involved, they would study the case, not just the file prepared by the police and the penitentiary."

"If they decide to let you out, they should help you with employers, work, etc.."

(Group 3)

"'What would you think if we let this guy out?' If the police say no, you don't get out."

(Group 12)

"Three guys wind up inside; they interpret things, the Board equalizes things so that you get the same as your partners."

(Group 15)

"He doesn't get out, he had a chance when he was convicted."

(Group 16)

"You're lucky, you got the minimum for that. You're going to do more time."

(Group 7)

"A big show like in court."

"You're in a hurry, and you're scared."

(Group 10)

"A usurious loan."

(Group 3)

The above sample of inmates' views on probation, more specifically on the Board that approves their release, is only a small fraction of the many protests voiced on the subject. The interviewees also had a constructive attitude: after they stated their objections and discussed problems, they made a number of proposals.

We begin by looking at the inmates' ideas on the organization and the stages that lead up to parole. We then discuss their lack of information and knowledge, the role of the police, informing, the consequences of multiple charges, the role of the

parole officer, review by a judge, and whether or not the N.P.B. should be abolished. The chapter ends with the series of proposals made by the inmates.

The N.P.B. is supposed to consider three factors before releasing an inmate: his file, his behaviour in prison and his release plans. In fact, they tell us that two things really count: the police file, and negative aspects of behaviour (Gr. 4, 5, 10, 15, 16).

> "Everything I do that is good doesn't count. Everything bad has a hundred times more weight."
>
> "When I went before the Board, nobody cared about my behaviour inside, my curriculum vitae, only my record, only the negative side. They only asked questions about my record."
>
> (Group 16)

Similarly, by basing themselves only on the file and ignoring improvements in behaviour, they fail to take into account the living unit officers, those who know the inmate best (Gr. 1, 7, 8, 12).

> "L.U.s[1] and paroles are totally unrelated."
>
> (Group 1)
>
> "They say to themselves, 'He supports him too much. Maybe he is afraid of the inmate'."
>
> (Group 12)

Concerning the hearing (Gr. 3, 7):

"You are constantly pushed around. 'Why did you do that?'

'You are disgusting, you'll never be able to do that.'

---

[1]Inmates use this abbreviation in speaking of living unit officers.

They bug you all the time."

"You don't often get the chance to say anything positive."

"It's difficult for the individual to express himself."

"If you want to bring in a lawyer, they think badly of you."

"My officer told me that it has to be an exceptional case."

The N.P.B. is an organization with a twofold goal: to adjust sentence length on the basis of its own guidelines (Gr. 7, 8, 15, 16) and to continue to make the system work (Gr. 5, 15, 16).

"A repeat offender who has nothing outside will get out. It's a big moneymaking machine."

"I don't want to come back to prison... so they don't not let me out because I wouldn't be back."

(Group 16)

"It's always the same people who are here, who are trapped inside. They need customers."

"Parole is a business; it's an industry."

"The more conditions they add, the better their chance of getting inside."

(Group 5)

At the assessment, the type of penitentiary in which the inmate is held affects his chances of being paroled. When two partners are imprisoned at the same time, one of them is often held in a maximum security institution longer, and his pal is in medium security. This delays the pre-parole procedure (Gr. 15).

The institution where the inmate is imprisoned looks unfavourably on challenges to its decisions. The inmate's right to submit his application to the N.P.B., even if

his case officer is against it, works against him; this poses a problem for the inmates (Gr. 1).

Even if inmates have the right to appeal N.P.B. decisions, it seems that the Board does not act favourably when its decisions are questioned it notifies the interested parties in the following terms (Gr. 9, 16):

> "I must also inform you that the Board does not usually act favourably to a new application for the same type of release within six months following refusal."
>
> (N.P.B. quoted by group 9)

The interviewees complain of the excessive time that must elapse before the N.P.B. reviews a file (Gr. 2, 3, 15).

> "They put you aside, at the end of "x" years they will see you."
>
> (Group 2)

> "If you're eligible after 20 years, you file your application when the 20 years are up; you get an answer after two or three years."
>
> (Group 3)

Finally, appearing at a parole hearing means being judged all over again (Gr. 12). One inmate says that he was acquitted of a charge for which his parole had been suspended, but the Board refused to release him on mandatory supervision (Gr. 3).

Even after parole, the inmates do not consider the conditions to be very realistic (Gr. 3, 14).

The N.P.B. Seen from the Inside

Several groups were unanimous in complaining of lack of information: "We don't know about the changes in regulations on permits, or the reasons behind them" (Gr. 1).

If knowledge is power, then the inmates have little power; even in cases of revocation, some inmates are not familiar with the review procedures, some even believe there is no such thing (Gr. 14).

The Police and the N.P.B.

> "Before he is let out on parole, they (the Board members) have a list of his future plans. They telephone the police in the area where he (the inmate) wants to go. If the police says, 'We don't want him out', he doesn't get out."
>
> "This is the same as saying that they have the right of life or death over you."
>
> "The police are in control."
>
> Police officers "try to solve cases, and the best victim is the guy on parole."
>
> "To put you away, (they say) 'There, in such and such a year you did such and such'."
>
> (Group 3)

> "The classification officer says to the inmate before the hearing, 'You're going to try and convince them, and I'm afraid you'll succeed. The police don't want you on the street.'"
>
> (Group 10)

"The police officers have their men everywhere."

"An old-fashioned police force is in charge...."

(Group 2)

Prior to parole, the omnipresence of police officers is evident in the police report's late arrival, which further delays N.P.B. review of the case, and in the report itself, and all the importance the N.P.B. gives it. The report includes the charges of which the accused was convicted, plus police suspicions regarding him. Since the inmate does not have access to the entire report, he cannot refute any false allegations it might contain. Moreover, a police officer's word to the effect that a person is undesirable is enough to prevent parole being granted (Gr. 4, 8, 10, 12, 15).

After being paroled, the former inmate is still subject to police pressure, either indirectly through a parole officer, or directly when he must report to a police station (Gr. 4, 10).

Informing and the N.P.B.

"Give us information, and you will get out."

(Group 15)

"If you don't do exactly what the screws say, you won't get out. A code or a parole 'can be negotiated' if you cooperate."

(Group 8)

"'If you tell me who bought (your goods), you will get out'. The inmate refused to answer and he didn't get his parole."

"Security (in the penitentiary), depends on this, it needs informants."

"If you can 'help' us, we are ready to help you."

(Group 10)

"They urge you to inform, they want to know your accomplices and that affects you chances."

(Group 2)

The N.P.B. encourages inmates to become informers. It seems that if an individual "squeals" on someone else, he is released, on either temporary absence or full parole. Otherwise, the inmate is declared unsuitable for parole (Gr. 3, 6, 9). Once this system is established, anyone can say anything to win favours (Gr. 3, 5, 6, 10).

The N.P.B. and Multiple Charges - Implications for the Inmate

We spoke above of the negative consequences of pleading guilty to several charges, usually related to different incidents. In the short term, the sentence may appear interesting, but the N.P.B. classification and the chance of being paroled after serving one-third of the sentence are seriously affected. Since the N.P.B. only looks at the record, it refuses to consider the fact that an inmate may have pleaded guilty to more offences than he actually committed (Gr. 5, 7, 16). Plea bargaining, common practice in our legal system, is denied by the N.P.B.

Parole Officers

"He has police contacts."

"He knows everything before I get there."

(Group 12)

"He's a nobody."

(Group 2)

"He never helped me, but he didn't do any harm."

(Group 10)

"Harassment."

"He holds your other sentences against you."

"The first few times, I had to show him my pay cheque."

"He has to justify his job."

'Have you made any applications?'

I said that I had a record.

The officer said, 'Why did you tell them that?' If you're going to tell them later, might as well do it sooner."

(Group 3)

"They play with us like yoyos."

"They always judge you on your past."

"'I am neither for nor against your code program, I don't know you well enough' said the parole officer to the inmate who had been in prison for 10 years!"

(Group 8)

"You can't rely on them, they force us to play a game. If he had not forced me to tell lies, we might have found the real problem."

"It's the fun of having someone's life in your hands. 'My recommendation affects his life and those around him. I'm important.'"

(Group 9)

"Incompetent."

"They are overly critical."

"They want you to be dependent on them."

(Group 9)

"They're like your mother. 'Have you tied your shoes?'"

"It hurts you. They demoralize you. It's as if you were incapable of making a decision."

(Group 5)

"We are told to be independent, but they always want to control us. They take away all my initiative and then tell me I need initiative."

"If you do one thing, they will tell you to do the opposite, and vice versa."

"They exaggerate the amount of information gathered from your family."

"I had the impression that its was all simply personal curiosity."

"Often, they don't trust you at all."

"They're narrow-minded. 'What proof do I have that you will not drink when I'm gone?'"

"They even make comments about your girl friends."

"Why do they want to get into our lives so much?"

"It's none of their business."

"When I got out, I was supposed to go to my aunt's house... They went to see my aunt and told her I would be a very bad example for her children."

"Some have lost their jobs."

(Group 7)

"They use information against you, not to help you."

(Group 16)

"When you have a job, they come and see you there; it looks bad. It creates conflict with the people you work with."

(Group 12)

As we have seen, the subject of parole officers elicited a spate of unflattering comments; once again, the relationship is based more on control than assistance. Many declared that they are victims of personality conflicts between themselves and the officers. In addition, police pressure exacerbates already difficult situations. Parole officer meddling in their private lives is viewed very negatively: either the attitude is seen as a symptom of a power trip, or it is considered simply morbid curiosity (Gr. 2, 3, 5, 6, 7, 8, 9, 10, 12, 15, 16).

An amicable relationship in which the officer simply gives advice aimed at preventing a repeat offence seems just as utopian, as real help in finding a job and housing for someone who wants them (Gr. 10, 12, 15).

Judges and the N.P.B.

In light of the problems raised by the interviewees regarding the N.P.B., we wanted to know if they would prefer that parole be submitted to a sort of review or control by judges.

"No", that would be a "new control."

"He (the judge) already came to an agreement with the police when the sentence was handed down..."

"Perhaps they would pay closer attention to points of law."

"There are already former judges, former police officers, etc., people who are already against us, who are not impartial."

"No, because they sentenced us."

(Group 7)

Two groups (8, 14) believe that review by a judge might be a good thing. The others fear that, since the judges were involved in the case earlier, they would want to try the inmates all over again if they were part of the N.P.B. (Gr. 4, 7). Moreover, some judges would find themselves in conflict of interest because, having sentenced an individual to "x" years, they would have to assess his suitability for parole (Gr. 10). Furthermore, the Board's decision-making process is already slow, and the possibility of appealing its decisions could further delay a decision for fear of its being overturned (Gr. 7). Finally, prison files would be sent out yet again; this is a bad thing because the judges are not sufficiently close to the inmates (Gr. 1).

A positive aspect of such a decision would be that judges, through greater involvement in the parole mechanism, would finally realize their mistake in allowing for the possibility of release after one-third of the sentence. If they knew the time actually spent in prison, judges would perhaps show more leniency when handing down sentences (Gr. 1, 15).

Should the N.P.B. Be Abolished?

"That's how it works in the United States; I would really like that."

"It's not a bad idea."

(Group 10)

"The time done would be better. No reward system. No obligation to play a game."

"It would be the one playing both sides who would be most hypocritical. No more need for L.U.s.[1] No more informing inside and a better atmosphere between inmates."

"They will never be abolished because of the jobs. It is the biggest money machine."

(Group 7)

No, it would "just shift the problem."

(Group 9)

"No, it is an important hope."

(Group 14)

"It has to stay."

"Paroles are good. It's how they're used that's bad."

(Group 8)

The inmates generally agree on abolition of the N.P.B. if abolition of temporary absences and parole were accompanied by a reduction in sentence length. For long sentences and life sentences, the inmates would like to keep the hope of getting out before the end of the sentence. On the other hand, they cannot see how the two systems can coexist. One of the many problems surrounding this discussion is that the inmates, while they agree that the current arbitrary system should be abolished, fear that, once the new machine was running smoothly, sentence length would not be reduced; once parole was gone, the trend toward longer sentences would simply continue.

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[1]Inmates use this abbreviation in speaking of living unit officers.

Group 14, while opting to keep parole, because it provides an important hope, challenges the discretionary power of the various intervening parties, the control over the individual, and the loss of "good time"[1] when parole is revoked. The most important thing is the hope of getting out before the end of the sentence.

For groups 8 and 9, application and use of parole by the N.P.B. raises some problems, but mandatory supervision is a good thing. Concrete proposals were submitted to mitigate the disadvantages.

Proposals

Since the aim of the interviews was to collect the views of each group individually, with no reference to solutions advocated by other groups, some proposals made by or more groups do not have overall support. We took the liberty of consolidating proposals where the intent seemed to be in line with the comments made.

1. It is proposed that current Board members be replaced by community board members, professionals who are neutral; and that former police chiefs and prison wardens be excluded from office.

(Groups 7, 8, 15, 16)

2. It is proposed that eligibility criteria be clearly defined.

(Groups 1, 8)

3. It is proposed that the police report be excluded from the correctional institution file; or that the inmate have full access to his file so that he can refute false allegations.

(Groups 4, 7, 8, 15)

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[1]The inmates use this term to mean remission of sentence for good behaviour.

4. It is proposed that the inmate take part in the deliberations.

(Groups 6, 10)

5. It is proposed that more power be given to living unit officers. This decentralization is justified because they have a better understanding of the inmate's progress.

(Group 1)

6. It is proposed that parole be automatic one-third of the way through the sentence for those serving a first sentence.

(Groups 1, 4)

7. It is proposed that, in cases of long sentences, the review take place in the fifth year of detention at the latest.

(Groups 1, 3, 4, 6)

8. It is proposed that, in cases of life sentences, "eligibility on" be changed to "eligibility on_____ at the latest."

(Group 15)

9. It is proposed that the minimum period of incarceration be abolished.

(Group 8)

10. It is proposed:

    a) that, in preparation for parole, temporary absences be more numerous and access to a halfway house be made easier;

    b) that, during any assessment, presence of the individual concerned be mandatory;

    c) that the file be reviewed prior to the eligibility date, so that a decision can be made by the said date;

(Groups 4, 11, 15)

11. It is proposed:

a) that N.P.B. hearings be public;

b) that the Board consist of a six-member jury;

c) that the inmate committee assist the person at the hearing;

d) that the Board draw up a contract containing clear and precise objectives adapted to the abilities of each individual;

e) that the Board make a formal commitment to maintain the conditions agreed to between the parties;

f) that parole be granted as soon as the individual attains the objectives stipulated in the contract agreed to by the parties;

g) that, in cases of a repeat offence, the individual be re-incarcerated to the end of his sentence but without losing time gained for good behaviour.

(Group 9)

12. It is proposed that the sentence be calculated by the N.P.B.

Mandatory Supervision and Remission of Sentence for Good Behaviour

Mandatory Supervision

To be abolished. "The guy has done two-thirds of his time." "Out of two years, you do 16 months and 7 days, you are required to report, to go to the station every month, it's ridiculous!"

They (the police) tried to rattle me."

(Group 3)

"You go to prison in '78, you get out in '88, you have to report until '92, you're still subject to them and their criteria..."

"If you have anything to give me, give it to me inside."

"We trust you, but..."

(Group 4)

Remission of Sentences

"Do not away with remission of sentence. It's a right earned for good behaviour."

"If they do away with it, it would harm smooth operation of the penitentiary."

"The only hitch is that the judge gives sentences on the basis of good time."

(Group 2)

It's a good thing. You keep your place. You don't step out of line."

(Group 12)

"It works in a bizarre way. Some deserve it and don't get it. Some don't deserve it and get it." (speaking of life sentence).

"I cannot understand why, after two-thirds of his sentence, he gets out for good behaviour and then he's still made to pay."

"If you have to report, the cell has just gotten bigger, that's all".

(Group 7)

"If you forget to report, they'll put you back in."

(Group 5)

"...you have to report to the police and observe 56 other conditions." "They can put you back in on suspicion." The requirement to report to the police station should be done away with. "If you get some little creep, it makes you sick."

"They send guys back in for stupid little things.""It allows the staff to have inmates who are calmer."

"If the guy had nothing to gain or lose..." but "you can lose one day of good time for a coffee stain of a poorly made bed."

"One day in prison for a coffee stain!"

(Group 7)

"...the remission of a sentence is deserved, it is something earned. It's not right to take it away from you on mere suspicion. The police officers gain from it."

(Group 10)

Outside, for $500 in tickets, you get one day in Bordeaux; here, you do one more day because your bed is not made properly."

(Group 10)

When an inmate is released on mandatory supervision, he has earned sentence remission through good behaviour; why supervise him outside? Why is it that, on mere suspicion by a police officer, he can be sent back to prison and lose this "good time"? Why do police officers harass him when he reports to the police station? Why is he at the mercy of, and threatened by, parole and police officers? Most of them say that, after serving two-thirds of their time, they should be able to get out without being subjected to any other control over their lives (Gr. 2, 3, 4, 5, 6, 7, 8, 15, 16).

With the exception of a few individuals in one group, inmates believe that sentence remission for good behaviour is one of the positive aspects of the correctional system. This possibility, this hope of getting out earlier, motivates the inmate to behave well. However, the days earned should not be lost for peccadilloes (e.g. a poorly made bed, a coffee stain, taking two trays). Sentence reduction is seen as being so conducive to hope, encouragement, and effective social interaction, that

several inmates, including those who have a right to it and lifers who don't, proposed that all inmates be eligible for sentence remission.

Fixed Sentences and Sentencing Grid

"I don't believe in it, even if I think it's a good idea."

"I ask myself at what point the judges apply it; police officers and money do the talking."

(Group 7)

"They have too much money invested, so it would be illogical for them to change the system."

"They would be obliged to get rid of positions. The machine has to be kept running."

(Group 16)

Fixed Sentences

"An excellent idea."

"You wouldn't get your hopes up for nothing."

(Group 12)

"It can't work because the judges are under the police's thumb, they know things about them, it happens all over."

"The machine is running smoothly."

"There should not be any sentences. You are assessed, and then you're let out. There should be a maximum number of years, however."

(Group 3)

"It's the best."

"Before, you knew your date."

"Before, nobody squealed. There would be less tension outside."

(Group 5)

We asked the following question, "Should parole and sentence remission be abolished and replaced by fixed sentences?" By fixed sentences we meant:

- release date known from the start;
- entire sentence served;
- no parole;
- no sentence remission; and
- shorter sentences.

Generally, the inmates look favourably upon this return to the old system. Fixed sentences and abolition of parole would, as discussed earlier, be accepted if sentences were indeed shorter; the inmates fear that sentences would remain as they are. Moreover, they want to keep sentence remission. What they like about the fixed sentence is the certainty of not being cheated by the current discretionary powers, of "knowing where you're at." The inmates also feel that it would do away with a sizeable portion of the informing that goes on inside prison walls. Tension inside the walls would be reduced, and the overall atmosphere would improve significantly. It would be like "before"! (Gr. 1, 2, 5, 6, 7, 10).

The sentence remission would have two important functions in prison life. It would help keep prisons and penitentiaries relatively calm, and it would give some hope of getting out before the end of the sentence for good behaviour.

Sentencing Grid

The groups are far from unanimous about sentencing grids. The most positive aspect is considered to be that: the grid would put an end to waves of severity in dealing with some types of offence and to sentences to set an example (Gr. 4, 7, 16). The grid is also helpful to the individual facing a first offence (Gr. 3, 7).

Now, the negative side. The grid takes no account of circumstances surrounding the offence (Gr. 14, 16), multiple charges (Gr. 4, 7), age of inmate (Gr. 4). Moreover, it places too much emphasis on previous offences (Gr. 4, 5). Thus, an inmate who returns to the system will get a sentence disproportionate to the offence committed. The grid can be unfair and dangerous.

A few inmates gave considerable thought to the question of sentencing, and one of them suggested a new sentencing and sentence administration system.

It is proposed (Group 10):

1. that plea bargaining be abolished;

2. that a system with fixed sentences for specific offences be established (i.e. a sentencing grid);

3. that a new type of sentence administration be introduced (e.g. for break and enter, everyone would be sentenced to 48 months):

    a) for a first offence, the prison sentence would be suspended for 48 months; a P.S.R. would be requested, and the needs of the accused be taken into account (e.g. conditions to be observed and assistance to be provided);

b) for a second offence: if, after reviewing the file, the judge decides that adequate assistance was not provided, he could recommend that the individual spend one year in detention; during the second year, the inmate would have the right to a rehabilitation program under which he could find a paying job; after that, he would be eligible for parole, but he would keep the sentence remission that ensures his last year in freedom;

c) for subsequent offences: the person would serve at least two years of full detention out of four years; in the third year, he would have the right to a rehabilitation program and, with remission of his sentence, the last year could be spent in freedom.

The C.S.C. (Correctional Service of Canada) would be obliged to follow the judge's recommendations and submit a report to him. A special committee affiliated with the Department of Justice and responsible for checking that recommendations are applied, would visit prison institutions on a regular basis and meet with the inmates. Whenever a program was not applied, the C.S.C. would be required to provide an explanation; after hearing the inmate's version, the committee would have the power of decision.

The police file should be sent to the institution where the inmate is imprisoned within 60 days of conviction. If it is not, the N.P.B. should not take it into account. To respect the presumption of innocence to which every individual is entitled, no statement of suspicion should be entered in the file. The complete report should be available to the inmate upon request.

CHAPTER 3

25-YEAR MINIMUM SENTENCE

"...after 25 years, a company president gets a party; as they say, for good and loyal service. Oh yeah...it's a long time..."

(Group 6)

Twenty-five Year Minimum Sentence - The Inmate's Viewpoint

"It's a cry of despair."

"It's not possible that nothing is being done."

"7 years and 10 years, they gave a guy some hope."

(Video)

"It does away with any possibility of working your way back."

(Group 1)

"A completely lost citizen."

(Video)

"Your life is finished."

(Group 6)

"25 years, you have no more hope."

"A living death."

"After 25 years, what is society going to do with us?"

"After five years, mental deficiency sets in. Try to imagine what 25 years will do." "It's impossible to make plans."

(Group 2)

"What use is it to learn a trade that doesn't meet any standards and that he won't be allowed to practice later"

(Brief by Life-Plus Group)

"How can this be allowed?"

"We have the lowest repeat rate."

"I have acquired immense power."

"Looking at 25 years scares me more than dying."

"If I were to get up one morning and decided that I didn't want to do any more time...I would become very destructive."

"You have two choices: suicide and violence."

Security increases daily.

"They want to bury us alive."

"'They won't get to me',you tell yourself every day."

"You cling to that (appeals).

"It's rage that keeps me going."

"You go into a state of deterioration on your own. You destroy yourself inside."

"They're afraid you might do something."

"Because you commit a murder, it doesn't mean that all your other abilities vanish."

"There is nothing worse than feeling useless."

(Group 2)

"All murders are judged as loathsome. Why judge them that way?"

(Group 15)

"The hired killer who earns his living killing others is judged by the same standards as the poor guy who, deliberately in the eyes of the law, kills as a result of serious emotional disturbance that takes away his sense of responsibility and makes him temporarily lose control of his mental faculties."

(Brief by Life-Plus Group)

With hanging, people hesitated before convicting someone. People generally believe that, after a short time, inmates get out. "They don't spend too much time inside." Therefore, they give 25-year sentences more often.

(Group 11)

Those serving life sentences" ...a repeat rate of 0.05%, nevertheless they're always the ones who get it in the neck."

"If guy commits a second one, it doesn't stop them taking a chance (at the N.P.B.), it has no impact on the public."

(Group 15)

"...in the mind of a lifer, the death sentence has never ceased to exist, but they want him to be his own hangman when he can't take it any more."

(Brief by Life-Plus Group)

The Canadian Sentencing Commission and 25-year Minimum Sentences

Twenty-five years is such an inordinately long sentence that, without any prompting from us, the inmates (lifers or not) brought the subject up themselves. "What will a Commission examining sentences do for 25-year guys?" Even before we visited the penitentiaries, some inmates knew about the C.S.C. (Canadian Sentencing Commission), and had some of its documentation.

A group of inmates serving life sentences (Video) had kept the booklet

containing the policy statement on sentencing[1] and told us it gave them hope, especially the excerpt quoted below:

> "...humaneness and common sense dictate that some possibility be provided for relief from the conditions of sentence in cases where there has been a genuine change in the offender or in the circumstances relevant to his or her incarceration.
>
> For example, some offenders may following incarceration genuinely repent or make changes in their lives which alter their risk to the public or which alter the public's interest in seeing them so severely punished. Many such examples exist." (p. 76)

If, based on principles of humaneness and common sense, it is acknowledged that mechanisms must be provided to allow for heightening of awareness in a sentenced individual, the inmates conclude that the required changes to the 25-year sentence have been defined. Other inmates say that people who are able of return to society cannot be allowed to destroy themselves (Gr. 11). Even Beaudoin and Tarnopolsky (said the participants in the video) are aware that a 25-year sentence destroys a human being. Basing themselves on the words of the Honourable Bora Laskin, Beaudoin and Tarnopolsky ask whether the excessive, uncommon and cruel nature of this sentence should not be recognized.[2] Here is the quote read by the inmates:

> "This punishment of a minimum of 25 years of imprisonment without parole, was substituted by Parliament in 1976 for capital punishment, which was abolished at that time. The twenty-five year sentence appears to cause significant anxiety as well as physical and psychological degradation for most, if not all those who have been so condemned. If this penalty creates these effects, is it "obviously excessive"? Does it go beyond what is rationally acceptable? In the words of Chief Justice Laskin, is the "harshness...and the severity of its consequences" disproportionate in relation to the offence for which it is imposed?" (p. 393)

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[1]Sentencing, Government of Canada, Ottawa, February 1984.

[2]Walter S. Tarnopolsky, Gérald-A. Beaudoin, The Canadian Charter of Rights and Freedoms. Toronto: The Carswell Company Limited, 1982, 590 pages.

Such statements, the project carried out for the C.S.C. and the reform of the Criminal Code announced for 1986 have given a glimmer of hope to those serving life sentences.

Who Really Knows What It's Like to be Sentenced to Life Imprisonment?

According to the inmates, if politicians, judges, jurors, police officers and ordinary citizens knew the living conditions in prisons and the consequences of long sentences on the convict and his family, fewer sentences would be handed down with multiple-year-minimums before any question of eligibility for release (Gr. 1). Furthermore, the public believes that, in 75% of cases, a person sentenced to life imprisonment gets out after three or four years (Gr. 4, 13, 15). Juries do not hesitate to convict someone for first-degree murder, the opposite of what happened when hanging was used (Gr. 11). The inmates believe it is of primary importance that the truth be known (Gr. 11).

What Life Imprisonment is Really Like

"You cannot adapt to prison, you condition yourself to it"

(Video)

"Prison is my home!" This sad truth hits only after many months, even years, have gone by. You have to realize that, for a very large part of your life, there will be locked doors. It is difficult to come to terms with, almost impossible to explain in words. But, along with confusion and distress, this is the reality facing the lifer (Gr. 4, 13, Brief by Life-Plus Group, Video). One of the consequences of having to live in prison for a number of years is institutionalization.

"You don't notice it, you are accustomed to having someone else make decisions for you. For example, when you come to a door, someone decides for you." "After a while, you always hesitate when you come to a door, as if they were all locked."

"Moreover, in prison, you're on the defensive all the time, and you realize that you're no longer capable of love."

(Group 15)

It is difficult to explain all that one feels after 8 or 10 years in prison. Sometimes, the inmates said, they are aware that they are alienated and treated like children; at other times, they just put up with it. Deprived of their possessions (e.g. clothing, accessories, souvenirs), they become extremely possessive of what little is left. And they become aggressive toward the dispossessors, people who draft orders without thinking of the possible consequences (Video). Searching a cell is a territorial violation. "Even this space does not really belong to us," pointed out an inmate who has been in prison for nearly 20 years (Gr. 9).

Surviving from one hope to the next, that is all you do after 8 years in a medium security prison. Without temporary absence, without discharge, even 15 years is unthinkable (Gr. 13).[1]

The costs of long incarceration are numerous, say the inmates. Society bears the financial costs, but they and their families bear the social costs. Over the years, bonds are ruptured whether you want them to be or not: "In 25 years, who will my husband be?" (Video). Although the individual is not killed for what he did, a sentence with eligibility for parole in 25 years simply tells him that he "cannot"

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[1]After 15 years, an inmate sentenced to a minimum of 25 years may apply for review of his release date.

return to society (Gr. 11, 13). The institution, by bothering and harassing visitors, drives them away (Gr. 2, 3, 11) (strip searches, etc.).

The inmates expect to do about ten years in a maximum security institution with the inconvenience entailed, and the added threat of being sent to a super-maximum security institution if their conduct is not irreproachable (Gr. 11, 13, Video). They also feel harassed by having to plan for a 25-year stay (Gr. 11), or by such things as notices from the National Parole Board informing them that they may get out by the year 2002!

By establishing the 25-year sentence, the politicians did not abolish the death penalty. According to the inmates (Gr. 11, 13), they only changed the method of killing. Western society has passed from corporal punishment to psychological punishment, the death penalty has evolved in the same way. Psychological death has replaced the physical death penalty.

Society gives the individual the "choice" of selecting physical death when he can go on no longer (Gr. 13).

"Experts" and Lifers

> "If you're alone, you see your situation as an accused as if it were a dream. If nobody sits you down and talks to you and brings you back down to earth, you are as helpless at the beginning of the trial as you were at the time of the offence."
>
> (Group 1)

"Deals are proposed by the Crown (e.g. criminal negligence, guilty of involuntary manslaughter, ...4 years, 10 years, 7 years), your lawyer strongly advises you against accepting, under the pretext of acquittal, and you end up with '25 years eligible'."

(Group 11)

It is only after the trial that the inmates realize their need for assistance, for resource persons, and counsellors who should have been present during the initial phase of their contact with the penal system. None of the intervening parties has the sole aim of helping the accused, not even defence counsel.

Institutions have far less professional staff than security staff; the inmates would like greater access to professionals (Gr. 11, 13). Some would even like to see them play a very active role in reviewing cases (Brief by the Life-Plus Group).

Are Lifers Walking Time-bombs?

Participants in the video said that prison administrators, not the prisoners themselves, refer to them as "walking time-bombs". The administration realizes that it is unthinkable to keep men in cages for 25 years. They added, "They tell you the C.S.C. does not know what to do with those sentenced to 25 years". Because they must be kept occupied, these inmates are offered the important operational jobs in an institution (eg.: cafeteria, inmate committee). Other groups of inmates do not always find it easy to get along with the "25ers" because their overriding despair makes it hard to know what to say or do (Gr. 13, Video). Nobody knows when we might crack, we don't even know ourselves. Over time, the growing number of lifers makes the situation more and more explosive. Until now, a vague but real hope that something will change, something will be done, has helped us bear it; once this hope

runs up against the status quo for this type of sentence, we cannot guarantee what will happen. At the present time, we live from day to day, one hour at a time, like alcoholics (Gr. 1, 2, 3, 11, 13, Brief by the Life-Plus Group, Video).

The N.P.B. and Lifers

> "You are eligible for parole after 20 years, you apply after 20 years, and you get an answer after two or three years."
>
> "When you appear before them, you have difficulty expressing yourself; you can have a lawyer, but it is not looked upon favourably."
>
> (Group 3)

> We see how the N.P.B. treats the lifers who appear before it. We learn from that.
>
> (Group 2)

Those serving 25-year sentences are only eligible for parole after fifteen years. During that time, the file sits on a shelf. To help them maintain some hope, they propose that:

> the N.P.B. review the files of those serving life sentences every five years. To them, review after 15 years is only window dressing, because by the time the N.P.B. studies the file, sets up a program (e.g. temporary absences, day parole) 25 years have gone by (Gr. 6, 11, 13, 15).

The 25-year Sentence - Revenge or Rehabilitation?

> "The reasons behind the punishment reflect either a desire for revenge or the intention to create a climate favourable to self-examination by the individual being punished."
>
> (Brief by the Life-Plus Group)

Twenty-five year sentences no longer have anything to do with rehabilitating an individual; they are intended to "preclude any chance of his earning his way back" (Gr. 1). It must be remembered that everyone will be on the streets eventually; what con ion will they be in after 25 years? (Video).

> This long sentence "is equivalent to ignoring the rehabilitation aspect", since an individual considered fit to be released (e.g. after five years) must continue to be punished for another twenty years."
>
> (Brief by the Life-Plus Group)

The Weight Given to the Views of Lifers

> "Our ideas have never been considered. Suddenly they're taking an interest in us."
>
> "We wonder what's going on."
>
> (Video)

"Will our views be taken into consideration? If they are, will the proposals be used against us?" There seems to be a certain wariness, developed over the years by the need to keep a glimmer of hope in order to survive. "This is what we wonder," the inmates said, "When we formulate our proposals for change" (Gr. 12).

Proposal

All the inmates say that the law must be changed to reduce the minimum 25-year sentence.

Video

A "life-group" agreed to meet with us for the sole purpose of discussing 25-year minimum sentences. The meeting was recorded on video-cassette with the understanding that the document would be sent to the C.S.C. (Canadian Sentencing Commission).[1] The inmates talk about their daily life, their despair and loneliness, their families, and the families of the victims", they also discuss their perception of how they are seen by the custodial facility administrative and security personnel. The inmates also discuss what the administration tells them it thinks of 25-year sentences. The interviewees proposed some changes to minimum 25-year sentences. One inmate who is not serving a life sentence, but who works with a lifer every day, describes what it means to live with these inmates.

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[1]Duration: approximately 200 minutes (VHS).

SUMMARY AND CONCLUSION

Under the terms of the contract between the Canadian Sentencing Commission and Pierre Landreville of the Ecole de criminologie de l'Université de Montréal (School of Criminology, University of Montreal), the researchers were to visit various penal institutions in the province of Quebec and carry out interviews with groups of inmates for the purpose of gathering information relevant to the Commission's mandate.

In order to seek out the views of the inmates, we conducted sixteen group interviews based on a number of points adapted from a list of questions prepared by the Commission. The sixteen groups[1] included more than 125 inmates. Thirteen interviews were held in federal penitentiaries and three in Quebec custodial facilities, including one with women at Montreal's Maison Tanguay. The interviews were carried out from February to May 1985.

Highlights

The inmates interviewed perceive the penal system as a "big machine" over which they have little control. Like many citizens dealing with government bureaucracy, they feel somewhat helpless and alienated. The feeling of powerlessness is exacerbated by the fact that they have a poor understanding of the system, especially those experiencing their first contact with the penal system. Some aspects of the system and some laws are unfamiliar to almost all of them. For example, virtually all

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[1]To preserve the anonymity of the participants we identified the groups by numbers assigned at random.

respondents were unfamiliar with the significance of "maximum" and "minimum" sentences.

Many referred spontaneously to "25 years eligible". Only a few, mostly long-term or repeat prisoners, knew what the terms meant; many of them associated, minimum sentences with drug trafficking and carrying a weapon. They were against minimum sentences because they unduly restrict judges, although a reduced charge is often negotiable. Moreover, virtually no inmate knew anything nothing about how probation works. Many believe that the length of probation is equal to the length of the prison sentence that is suspended.

Plea bargaining is a subject the interviewers discussed at length. They believe, "the whole thing is a racket" (Gr. 5) and "the dealing that goes on behind the scenes is incredible" (Gr. 15). According to many of them, plea bargaining occurs in 90% or even 95% of cases, because it saves the system time and money, enables police officers to obtain convictions even with weak evidence, and enables lawyers to earn more money by handling more clients.

To obtain a reduction of his sentence, the inmate can become an informer or plead guilty to several charges or a reduced charge. But they are unanimous on one point: it is dangerous to go to trial. "If you go to trial, you cost the state money, and you pay for it" (Gr. 6). Moreover, to get a good bargain, you must know the system and have money to pay the lawyer. "If a guy knows nothing, it's better for him to plead guilty right away" (Gr. 10). "If you have money, you'll get a "deal". No money, no "deal" (Gr. 10. "The more you pay, the more you're "cleared"" (Gr. 16).

As a general rule, the accused neither initiates nor takes part in the bargaining, except for some very serious offences or if he is very experienced. The lawyer plays an important role but, surprisingly, many inmates believe that "you can never be sure of your lawyer" (Gr. 5). Especially if you're short of money, you can't be sure he will not trade you to save a client who will pay more. "The defence couldn't care less about you, he'll sacrifice one or two, it depends on the money" (Gr. 4). Legal aid lawyers are seen as inexperienced and little inclined to invest energy in a case. But "there are some good ones. Especially young ones who want to make a name for themselves" (Gr. 1, 12).

Police officers and Crown prosecutors are closely linked in interviewees' comments on plea bargaining. As discussed below in the section on "main topics", the inmates have the impression that police officers play the most important role, and that "The Crown is completely controlled by the police" (Gr. 10). The Crown prosecutor plays a very active part in bargaining; he discusses things with defence counsel and transmits the agreement reached to the judge. But the police officers must accept the agreement. "If the (police) investigators do not agree, no "deal" is possible". (Group 9)

The police officers initiate plea bargaining by making several charges, either for the same incident or for several. Although it may be beneficial in the short term for the accused to plead guilty on several charges, even for incidents that he had nothing to do with, the practice has many disadvantages. Multiple charges can have an unfavourable influence on jurors, judges and, especially, correctional service and parole board personnel.

Views are sharply divided on the judge's role in plea bargaining. It is rare that the judge is not informed of the agreement reached, but he rarely participates in actual bargaining. While some believe that he merely endorses the agreement, others believe the exact opposite, i.e. that he maintains considerable latitude in this regard. As a general rule, his probity is not questioned.

But should plea bargaining be abolished or regulated? As the members of one group said: "It is hard to decide" (Gr. 5). In fact, most were quite undecided about it. Only one group was unanimously in favour of abolition; the others were divided because they saw advantages for administration of justice, and advantages and disadvantages for the accused. Above all, they had no illusions. "Deals would be made under the table, it's impossible to stop it" (Gr. 8). "Discretionary power would simply shift" (Gr. 2). The majority were of the opinion that the process should be regulated. "For a first sentence, there should be a neutral person who would come and explain what you are risking, and would negotiate with you" (Gr. 7). "The accused should have the right to two witnesses to the "deal"" (Gr. 7-8). "The judge should act as arbitrator to limit the power of the police" (Gr. 8). The proposals demonstrate very clearly to what extent they trust their lawyers.

Disparity between sentences also generated some discussion. Several reasons were given for the disparity: very high maximum sentences, money, informing, criminal record, police pressure, and trial location. Because many of these factors are dealt with in greater detail elsewhere, we will not discuss them at length here. Nevertheless, it should be emphasized that, generally, the inmates do not understand why their criminal record should be taken into consideration. As one of them said, "You are punished more than once for the same offence." Regional disparity is

unanimously denounced; to minimize disparity, it should be made easier to have a trial transferred to a large urban centre.

Even if most inmates have few illusions about the effectiveness of appeal, the procedure is seen in a rather positive light. It may be useful for remedying some injustice, and even offers a glimmer of hope, indispensable to those serving to a 25-year minimum sentence. But it is expensive to appeal and most lawyers, especially those from legal aid, are unwilling to undertake the procedure. "If you don't have the money, it's useless because legal aid never wants to appeal" (Gr. 8). Here again, many don't trust their lawyer's advice.

Relations between the media and the inmates are not good. The inmates feel they are used to "sell a product". They say that the media paint a picture that is incomplete, negative and horrifying. They feel convicted before they are tried.

As expected, parole is one of the topics that generated the most discussion among inmates. Most are ambivalent about parole; they see it as a measure that reduces some sentences and gives some hope, but severely criticize the way it operates. The main complaints are the Parole Board's extensive discretionary powers, the inconsistency of the criteria used, the role of police officers, and the fact that (they say) informers get out more quickly.

"It's a totalitarian system, you have no appeal. On mere suspicion, they put you back in the penitentiary" (Gr. 2). But the extensive discretionary powers of the Board members present an even greater problem: the Board is very sensitive to police pressure, and may rely on police information based on mere suspicion, without the inmate being able to defend himself. "On the other hand," say the inmates, "an

informer can buy a temporary absence or parole." But they are unenthusiastic about having the Board's decisions submitted to a sort of review or control by judges. Most fear that this would be equivalent to re-trial, and that the parole process would be even more tedious and protracted.

Parole officers are also severely criticized. The relationship between former inmates and parole officers is based more on supervision than on assistance. The inmates denounce the interference of the officers in their private lives. "Why do they want to get so involved in our lives? It's none of their business." "...I had the impression that it was because of personal curiosity" (Gr. 7).

Also, most of the groups would agree to the abolition of parole if it were accompanied with significant reduction in sentence length. They realize the danger of such a proposal if sentences were not reduced. Inmates serving long sentences, especially lifers, can't accept abolishing parole, their only hope.

However, there is unanimous demand for the abolition of mandatory supervision. "Abolish it. A guy who has served 2/3 of his time deserves to be left in peace" (Gr. 3). This idea was repeated frequently. They all want to return to the situation as it was before 1970. Remission of sentence should stay, and should be given its full significance through abolition of mandatory supervision. "... remission of a sentence is deserved, you earn it. It's not acceptable for it to be taken away on mere suspicion. Police officers do that" (Gr. 10). They also object to the ease with which days "of good time" can be lost. "You can lose a day of "good time" for a coffee stain or a badly made bed" (Gr. 7).

Despite some ambivalence, the majority of inmates favour shorter fixed sentences, provided some sort of remission of sentence is retained; remission of sentence is seen as an important factor in maintaining peace in penal institutions.

Main Topics

In addition to the specific issues raised by the Commission's mandate (which we discussed on the basis of the outline distributed to all participants), analysis of the interview reports revealed that four significant topics were broached spontaneously in almost all groups. The four main topics discussed by the inmates interviewed are: money, police officers, informing, and 25-year minimum sentences.

Money

It is obvious in all the interviews that virtually all inmates see money as the real driving force, the essential aspect of a satisfactory defence. In their view, money is of prime importance and the standard of the defence is proportional to the amount available.

"Man, if you don't have any money...!" "The more you pay, the better off you are" (Gr. 16). "If you have $50,000, if you have the best lawyer, you'll get six months; if you have legal aid, you'll do twelve years" (Gr. 15).

Money also seems to be the main topic of conversation between them and their lawyers. "Our role," the inmates say, "is merely to pay." "The first thing the lawyer will ask you is, 'Do you have any money?'" (Gr. 9). "The first thing he asks you is,

'How much have you got?'" (Gr. 2). "The first thing he asked me was, 'How much do you have?'" (Gr. 12).

According to them, plea bargaining also depends on money. "A deal worth the trouble is expensive" (Gr. 12). "When the guy doesn't have a cent left, the lawyer is no longer interested in going to trial, so he makes a deal" (Gr. 12). "If you have money, you get a "deal". No money, no deal" (Gr. 10). "'No money? Plead guilty right away...if you have no money, do your time'" (Gr. 16).

Many of them doubt the honesty of defence lawyers and do not see them as their lawyers; some of them even believe that defence lawyers are prepared, during negotiations with the Crown, to trade an accused who has little money for a client who has money. "The defence will sacrifice one or more poor clients to save his richest client" (Gr. 10). "Defence counsel "couldn't care less" about you; he will sacrifice one or two (clients) depending on the money" (Gr. 2). "I'll "give" you the poor one and you be good to the rich one..." (Gr. 4). "If you don't have any money, your lawyer will "give" you to the "pigs" while the others are let out" (Gr. 7).

The chances of appealing depend directly on financial means. Whenever we brought up the topic, it was usually linked directly to money. If the lawyer knows the accused has no more money, he will advise him against going to appeal. Here too, the question is, "Do you have any money?" (Gr. 15). "If you don't have any money, it (the appeal) is pointless, because legal aid never wants to appeal" (Gr. 8).

Police Officers

"Once you are arrested, you can't escape from the power of the police" (Gr. 2).

A second important topic in the interviews was the role of police officers in the penal system: they have the most important role and overshadow all other participants. All groups see them as omnipresent, even all-powerful, and the image they describe is not very flattering to either the police or administration of justice in general. "The police have full and complete power" (Gr. 3). "The police are in control" (Gr. 7). Some said that the police can abuse their power because "the law protects the police uniform too much" (Gr. 12).

Police officers are the first on the scene; they can "put pressure" on both the accused and the "Crown". Your fate depends on the pressure. "They conduct the inquiry, they find out if you have money...then, they decide whether or not to put pressure on you" (Gr. 12). They exert pressure on the accused by making him sign a statement, delaying his meeting with his lawyer, or pressuring his relatives. "The police can put pressure on your wife, your friends. If they decide not to back you up..." (Gr. 12).

According to the inmates interviewed, the police exercise strong pressure at the beginning of the legal process by laying several charges, either for one incident, or for several. The police officers, not the Crown attorneys, play the most important role. Multiple charges are laid to deal officially with the largest number of offences possible and to make an impression on the judge or the jury. "Police officers pad the files" (Gr. 3). "The police try to solve as many cases as possible" (Gr. 3). "It is good for their statistics" (Gr. 15). "The more charges the police lay on you, the more criminal you appear in the eyes of the judge and the public" (Gr. 14). "The police said, 'sign,' and I signed for 87 robberies" (Gr. 8).

But multiple charges are especially important during plea bargaining; once again, according to our respondents, the police play a crucial role. "It's not the judges or the Crown who have the most weight, it's the police officers" (Gr. 12). "The "pigs" control the game, they decide that you are going to get so much..." (Gr. 4). "Admit to the charges, we'll handle everything" (Gr. 2). "The police decide on the deal. The police manipulate the system" (Gr. 8). "If the investigators don't agree, there's no deal" (Gr. 9). "The police put pressure on the Crown. The Crown will not agree to a deal that the police are against" (Gr. 5).

At the trial, the police officers are also thought to have a very important role, either as "assistants" to the prosecutor, or by "manipulating" the jury. The detective sits with the Crown and he "often talks to the Crown during the trial" (Gr. 4). "The police sit behind and tell him what to say..." "The Crown is completely controlled by the police" (Gr. 10). According to the inmates interviewed, police officers "manipulate" juries by laying multiple charges or making a show of force. The jury is led to believe "... (that) with all these charges, he must be guilty of at least one of them..." (Gr. 6); the "presence of police officers armed with sub-machine guns at the various court exits paints a horrifying picture of the accused" (Gr. 6). "They surround the accused with three or four muscle men..., they use 25 police officers to protect Crown witnesses, and they dress the set with sub-machine guns in front of the jury" (Gr. 2).

Police officers have further input when the court requests a pre-sentencing report and during incarceration. The inmates also think police officers play a very important role in some decisions made by parole boards. "If the police don't want you to change penitentiary, you won't change" (Gr. 6). "They (police officers) decide

how much time you will do" (Gr. 2). "If the police don't want an inmate released, he's not released" (Gr. 6). "Police officers arrange with the institution to keep the guy inside" (Gr. 10). One of the interviewees said that when he appeared before the National Parole Board, his officer said, "The police don't want you on the street" (Gr. 10). Finally, they believe that police officers add a "multitude of suspicions" (Gr. 8) to the parole files that they (the inmates) never see.

The omnipresence of police officers is also felt after release. They put pressure on parole officers, and sometimes harass former inmates on mandatory supervision, even after the end of their sentences. "You get out, you go home, and the police do everything to discourage you, to push you around" (Gr. 12). Some suggest the abolition of the obligation to report to the police station because, "If you get stuck with some little creep, he'll drive you round the bend" (Gr. 10).
"Take away police power, and everything falls apart (Gr. 2)".

Informing

To our great surprise, closely associated with the topic of police officers, the subject of informers came up with a regularity and force that were altogether disconcerting. The attitude and role of the police go a long way in tarnishing the image of the administration of justice; informing, which also plays a very important role and is one of the "working tools" widely used by police, provides a final blow to the image and completely discredits the law in their eyes.

Informing is presumed to be on the rise in the administration of justice; the informer is paid in money or drugs, and informing is mentioned repeatedly in connection with plea bargaining. "Why does someone become an informer? For a

good "deal" or for money" (Gr. 14). "My brother co-operates and the police supply him with drugs" (Gr. 14). "'Give me the information and I'll settle your case'" (Gr. 12). "Informers get a fantastic deal" (Gr. 15). "'If you squeal on your partner, you will serve x years...'" (Gr. 8). "You get ready to give the right information in case you get caught" (Gr. 9). "They (informers) get everything by informing, they don't do any time in prison" (Gr. 2).

But while one can gain a lot by giving information to the police, one risks a lot by remaining silent. One of the participants says that he was accused as accessory to a murder; when he refused to become an informer, the charge was changed to murder. Another said that he is doing life because he did not want to testify against a guy. The police said to him: "'O.K., you're going to get life'... They saw I got life. Others who took part in the same fight and testified, were released" (Gr. 3). The members of the few groups with whom we discussed sentences fixed on the basis of the sentencing guidelines, told us that, in their opinion, the system would have the advantage of eliminating informing. "Whether I inform or not, I get four years" (Gr. 10). Even if sentencing guidelines would probably not have this effect, their remarks demonstrate the importance given to informing by the inmates.

Not without reason, they see several obvious disadvantages in the practice. "An informer can accuse anybody" (Gr. 2); and "Justice based on informers is a parody" (Gr. 2). Informing, as several of them emphasized, creates serious disparities. "One person is accused of murder, he accuses someone else of dealing in hashish; the first gets out, the second is thrown in the slammer" (Gr. 9). In the past, according to some of them, disparity between sentences had no negative consequences. When someone got off easy, the others were happy for him. It is different now because all

the informing makes them suspicious of anyone who gets off easy (Gr. 4, 6, 8, 10, 15). Furthermore, a system based on informing ensures that "the most dangerous stay outside" (Gr. 3). But according to some, one of the most important consequences is that, "When informing is accepted in the legal system, it spreads everywhere" (Gr. 2). That is what is happening.

Informing is repeatedly linked to plea bargaining; it is also thought to play an important role in prison, where it is traded for transfers or temporary absences (codes). "Security (in penitentiaries) thrives on it; they need informers" (Gr. 10). "Transfers are the same. An informer sells out 3 or 4 guys, even if it's not true. All he has to do is choose an inmate the administration doesn't like". "Depending on the case, some will get "codes" sooner than the rules allow, because they cooperate" (Gr. 3). "'If you want something, give us something'" (Gr. 3).

Informing is thought to influence parole. "'Give us some information, and we'll get you out'" (Gr. 15). "If one inmate squeals on another, he'll be released" (Gr. 9). "They (National Parole Board) urge you to inform, they ask for the names of your accomplices and this affects your chances" (Gr. 2). But the practice has other consequences. "They remembered me because I didn't want to name my accomplices" (Gr. 3) or "Let's say that I am paroled in ten years. The informer who got me convicted will be outside. He'll say: 'I am afraid of him.' They won't let me out, to protect the informer" (Gr. 3).

25-year Minimum Sentences.

The fourth important topic is 25-year minimum sentences for first-degree murder, sometimes for second-degree murder. We realize that the issue, like the death

penalty, is not part of the Commission's mandate. However, it came up so often that we could not ignore it. Several groups of inmates, especially those consisting of lifers, raised the issue. Inmates repeatedly said that the questions raised under the Commission's mandate are unimportant and irrelevant compared to the situation of an inmate faced with serving a 25-year minimum sentence. One group refused to discuss other issues, and the entire interview was devoted to the one topic. The members of the group filmed the meeting and asked us to forward the video cassette to the Commission. They also prepared a brief which is attached to our report (Appendix C).

A large segment of discussion on the issue concerns hope and despair. "With twenty-five years, you have no more hope" (Gr. 2). "A man sentenced to 25 years minimum is immediately totally disillusioned and loses all taste for life...for a person sentenced to life imprisonment with eligibility for parole after 25 years, the word 'hope' no longer has any meaning..." (Leclerc Brief, pp. 3 and 4). In order to survive, you temporarily pin your hopes on an appeal, "You hang on to that" (Gr. 2), in the revision of the Criminal Code promised for 1986, or in the Canadian Sentencing Commission. Several groups said that 1986 is a very important year for them. The inmates in the Life-Plus Group at the Leclerc Institution express this well in their brief:

> "We realize that we are approaching a decisive turning point, we are coming to a reform of criminal law, (and) long sentences will receive careful study. We think that you have been made aware, that you are fully aware of the expectations of all those sentenced to life imprisonment: for us 1986 is a crucial year, one to which we all cling, our glimmer of hope" (p. 30).

The inmates also tried to make us understand what they go through, to describe, to cry out their feelings. The time to be served "has an effect on the mind" they said. "We're afraid of going mad, of losing our minds. Each day, you ask oneself

how much longer you can hold on" (Gr. 11). "After five years, mental deficiency sets in. Try to imagine what 25 years does" (Gr. 2). "You see yourself waste away every day, and every morning you ask yourself what you're living for" (Gr. 13). They feel the effects of incarceration, they see the effects on their friends.

They notice that their vocabulary becomes more limited, they lose their sense of reality because they are treated like children, they lose all reason for living. Even the visits of loved ones become unbearable:

> "When his father, mother, wife, children, and friends come to visit, to love, to encourage and support him, they also remind him by their mere presence, that outside, behind the walls, life continues and goes on without him. He must resolve not to love again because he must pay for those few minutes of love per week with long hours of loneliness as soon as he returns to the coldness of his cell" (Leclerc Brief, p. 9).

The more time goes by, the more they see the glimmers of hope they cling to disappear, and the more they feel the effects of incarceration. Many cried that they had reached their limit, (that they were) "at the end of their ropes", that they could no* take it any more. The law must be changed, otherwise "things will explode".

> "If...the present law is toughened and applied, or the status quo remains, no one should be surprised if hostage incidents, major riots, murders of inmates or officials, or mass suicides occur in the prisons. Lifers will get the message loud and clear, that they have nothing to lose..." (Leclerc Brief, p. 31).

Several groups of inmates told us the same thing. They were not making threats or trying to blackmail us, but they wanted to make us realize that the apparently stable and tranquil situation among inmates will not last, cannot last, if they no longer have any hope.

Proposals

In closing, we would like to emphasize the points we believe to be the most important. Because the comments and views of the inmates are quite explicit, it is relatively easy to grasp the basic ideas. We deemed it advisable to limit the number of our "proposals" or "suggestions". We simply wish to highlight a few essential points that may not be given sufficient emphasis in the body of the report.

1. Review of 25-year Eligibility for Parole

The inmates were quite explicit: the sentence does not leave any room for hope, and they cannot contemplate "doing 25 years". Furthermore, it creates enormous problems for penitentiary administrators who have not prepared any special programs and do not know what to do with these inmates.

Currently, approximately 250 inmates are serving minimum sentences of at least 25 years; between 1965 and 1973 only 21 inmates released from penitentiaries had served more than 20 years.

Even if the Commission did not intend to address either 25-year minimums or the death penalty, it seems to us that it must examine these questions carefully and contemplate recommending relaxation and reduction of the minimum sentence. The political "compromise" made in 1976 to abolish the death penalty must be reviewed.

2. Keeping the Remission of Sentences

Many experts have questioned the effectiveness and usefulness of sentence remission as presently conceived. One notes that remission is granted almost

automatically, is subject to very broad discretionary power, is handled differently in different institutions, and creates major sentence management problems. Many experts have already recommended its abolition, particularly if fixed sentences are being considered.

Bearing in mind the importance that a great majority of inmates place on the measure, and the perception of its far from negligible role in maintaining stability in penal institutions, we are of the opinion that sentence remission of must be maintained.

3. Police Information

The inmates placed considerable stress on the role and power of the police at all stages of the penal process. While it is understandable that police officers work closely with Crown prosecutors in preparing cases, it seems less reasonable for them to be able to intervene after sentence has been pronounced. The information, more or less corroborated but always kept secret, that police officers communicate to penitentiary administrators and parole boards, can have an important impact both on the way incarceration is applied and on sentence length. We believe that the Commission should consider whether such information, which may modify the decisions of the courts, should be taken into account or subjected to specific control.

4. The Media

Throughout the project, media impact on police, trial and parole, at various stages of the penal process, was mentioned. The media are seen as the modern day pillory, and are considered to have an effect on both the accused and their families.

While it is important to protect the freedom of the press and ensure public trial, some journalistic practices are indefensible. These practices - publication of photographs, names, addresses, and details about the private lives of the accused even before they are declared guilty - have serious social and psychological consequences for the accused and their loved ones, not to mention their impact on judicial procedures and decisions.

We believe the Commission should consider proposing definition of strict standards for media control and regulatory agencies (e.g. C.R.T.C., Press Council) and associations of journalists.

APPENDIX A

RESEARCH STRATEGY

The project aim was to collect and collate the opinion of various groups of inmates in Quebec penitentiaries on specific aspects of the mandate of the Canadian Sentencing Commission (C.S.C.).

The Groups

We planned, organized and conducted a series of 16 interview sessions with different groups from Quebec penal institutions. To maximize diversity, we interviewed inmates of federal penitentiaries and the Etablissement de détention de Montréal (Montreal Penal Institution), an institution administered by the Ministère de la Justice du Québec (Quebec Department of Justice). It seemed relevant to seek the opinion of people who were currently serving short sentences, but had previously been sentenced to terms longer than two years, or were convicted for criminal offences and sentenced to less than two years. The only female inmates interviewed are those held in Maison Tanguay, a provincial custodial facility that, under an agreement with the federal government, handles female offenders administered by both levels of government. We came to an agreement with the inmate committee that female participants would be limited to those incarcerated for offences under the Criminal Code.

Over 125 persons (Table 1) participated in 16 days of interviews. In the eight federal institutions in Quebec, we saw 13 different groups, and over one hundred individuals had the opportunity of expressing their views on subjects of interest to

the C.S.C. The three groups from the two provincial penal institutions included approximately twenty people.

Groups Interviewed in Custodial Facilities According to Level of Government and Security Category and the Number of Participants in Quebec

Name of Institution		Number of Participants*
Federal Institutions		
Maximum Security		
Etablissement Laval	- 1st group	12
	- 2nd group	5
	- 3rd group	15
Regional Reception Centre		5
Etablissement Archambault	- 1st group	10
	- 2nd group	10
Total number of participants from maximum security institutions		57
Medium Security		
Etablissement de Cowansville		10
Federal Training Centre	- 1st group	5
	- 2nd group	8
	- 3rd group	8
Etablissement Leclerc		3
Total number of participants from medium security institutions		34
Minimum Security		
Etablissement Montée St-François		4
Etablissement Ste-Anne-des-Plaines		10
Total number of participants from minimum security institution		14
Total Number of Participants from Federal Institutions		105
Provincial Institutions		
Maison Tanguay		8
Etablissement de détention de Montréal		
	- 1st group	8
	- 2nd group	8
Total Number of Participants from Provincial Institutions		24
Total Number of Participants		129

*Although most participants spent the entire day with us, there was some turnover; the number of participants given is therefore an approximation only.

In each establishment, we began with a preliminary meeting with the inmate committee's core executive, to organize a day of interviews with a group of up to 8 or 10 individuals. Group size was selected to enable each individual to speak within the time frame available. Participants were selected by the inmates, and most of them were block representatives. The same procedure was applied to the various Life Groups that we contacted and, in one case, the meeting was recorded on video.[1] In one medium-security institution we expressly asked the administration to form an ad hoc group of inmates who had under five years of prison to serve. This decision reflects our aim to have the broadest possible sentence length sample. The members of inmate committees and life groups are mainly, almost exclusively, individuals who are serving long prison sentences. The decision to interview inmates in provincial institutions and the ad hoc group serving short sentences was made to increase the number of participants serving short prison sentences.

Only one of the groups contacted refused to meet with us for a day of discussion. The group preferred to have full control over its input, and submitted a short brief, and a request that it be attached to the report on the interview sessions (see Appendix B). The brief gives succinct answers to some of the questions raised by the Commission and explains the reasons for their refusal to talk to us.

The executive of the Life-Plus Group at the Etablissement Leclerc agreed to meet with us, provided we would discuss only life sentences with eligibility after 25 years. The discussion was recorded on video cassette, with the understanding that it would be sent to the C.S.C. (Canadian Sentencing Commission). Following the meeting, the group also gave us a brief for the Commission (Appendix C).

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[1]Document attached to the report.

Some members of one newly organized life-group who took part in a meeting with other regular inmates were interested in submitting a brief to the Commission. These inmates (Etablissement Laval) asked for our support to help them finish the task. Three resource persons (criminology students) worked with them in preparing proposals that we include herewith (Appendix D).

One inmate in a maximum security institution preferred to write his answers to the questions on the question sheet used as the basis for our discussions. His answers and comments are included with those of the other participants.

The Questionnaire

The document entitled "Some General Issues Raised by the Commission's Mandate", a text provided by the Commission to anyone interested in submitting a brief, was used as a basis for our own questionnaire (Appendix E). It should be added that the questionnaire, adapted to prisoners and issued to each inmate who took part in the discussion, was used as a general outline, a tool to generate discussion. This made it possible to further explore points on which our resource persons could provide information. The method also allowed for consideration of additional topics that arose during discussion. We refer the reader to the data presentation.

The Meetings

The first step was to meet with the core executive of the institution's inmate committee or life group, and outline our plan for a day of discussion with members of their group. The questionnaire used as the basis for discussion was given to these

individuals. By the day of the interview, all the inmates were familiar with the topics to be discussed. The same person led all but two of these meetings.

Reports on the Meetings

There is considerable continuity in the notes on the discussions. Thirteen of the 16 reports were drawn up by the same person. These reports on individual groups that we met are full of quotations; we used the inmates' own words as often as possible because they illustrate with considerable force and consistency the issues that concern us.

Report to the Commission

In order to protect the anonymity of participants who wanted such protection, each group was assigned a number at random. When we quote the words of the inmate(s) directly, we use the group's number as a reference, to illustrate the range of responses obtained. To ensure that the only group of women we interviewed could not be identified we opted to use the word "inmate", without gender connotation in presenting and discussing the interview material. Since the answers and comments made by these women on the issues that come under the Commission's mandate are no different from those of their male counterparts, we feel all the more justified for attempting to preserve their anonymity.

APPENDIX B

BRIEF SUBMITTED BY THE INMATES OF L'INSTITUTION LECLERC

11 March 1985

BRIEF SUBMITTED TO THE CANADIAN SENTENCING COMMISSION

INMATE COMMITTEE-

L'INSTITUTION LECLERC

Following a meeting with members of the Ecole de Criminologie de l'Université de Montréal (School of Criminology of the University of Montreal), who asked us to answer a series of questions (attached hereto), we hereby submit this short brief.

We would like to say that the Commission is only window dressing to satisfy an insatiable public and make good copy for newspapers and other media. We who are imprisoned can, in a single page, describe justice in Canada, which is not real justice, (i.e. divine justice).

1. The judge and the Crown prosecutor owe their positions, not to their ability, but to their relations with various levels of government, or to services they have rendered to the leaders of the party in power.

2. The defence lawyer owes his position to his reputation and his connections; the more expensive he is, the shorter the sentence.

3. If an accused decides to cooperate with the law, either honestly or dishonestly, he becomes its prey.

4. If the accused becomes an informer, he is set free, even if he is the worst criminal and murderer in Canadian crime history (e.g. Donald Lavoie). Moreover, the individual can equally well tell the truth or lie, with the approval of the Minister of Justice down to the ordinary police officer.

The Commission should be trying to shed light, not on sentencing, but on the legal system's lack of responsibility. Instead of discussing sentence inequality, it should be looking into the games played by those who are supposed to be dispensers of justice.

In closing, we ask the Commission to direct its efforts to the legal apparatus which, given the illegalities encountered at all levels of the administration of so-called justice, is trusted by fewer and fewer people in Quebec.

Sincerely,

_____

André Leroux, Chairman

_____

Claude Girard, Secretary

APPENDIX C

BRIEF BY THE LIFE PLUS GROUP - L'ETABLISSEMENT LECLERC

BRIEF

SUBMITTED TO THE

CANADIAN SENTENCING COMMISSION

SUBJECT DISCUSSED:

LIFE SENTENCES WITH ELIGIBILITY FOR PAROLE AFTER

25 YEARS

ORGANIZATION SUBMITTING THE BRIEF:

LIFE PLUS GROUP

ETABLISSEMENT CARCERAL LECLERC

(LECLERC PENAL INSTITUTION)

400 MONTEE ST FRANCOIS

LAVAL, H7C 1S7

TEL: 664-1320, extension 231

1985-04-12.

BACKGROUND

It must be remembered that abolition of the death penalty was primarily a political decision.

Because the Trudeau Government was determined to abolish the death penalty at any price but did not want to alienate its opponents, they enacted legislation raising the eligibility for full parole from 10 to 25 years. Beginning in December 1962, all death sentences were systematically commuted to life imprisonment with eligibility for parole after 10 years of prison. In 1967, the death penalty was partially abolished for a period of 5 years (the only exceptions being the murder of police officers and prison guards performing their duties). Two things are important here: first, death sentences continued to be systematically commuted to life imprisonment; and second, in spite of the partial abolition of the death penalty, eligibility for parole for capital murder remained the same, that is a minimum of 10 years of incarceration. The five-year moratorium came to an end, the government had no choice but to commit itself or resign. Having in fact abolished the death penalty for 15 years, it decided to make it official. Some pressure groups (especially police officers and prison guards), were strongly opposed to abolition of capital punishment, and were supported by a large segment of public opinion. In order to regularize an existing situation, it was decided to raise the eligibility for parole for an inmate convicted of first-degree murder to 15 years.

This is clearly the only reason the government raised eligibility for parole to 15 years.

Data prepared for the Solicitor General show that persons convicted of murder serve an average of 131 months before being granted parole, and that they account for 2.3% of all persons to whom parole (other than mandatory supervision) is granted and 1.3% of revoked parole. The figures indicate that murderers account for only a small fraction of parolees, and that their failure rate is extremely small.

INTRODUCTION

Philosophizing about the needs of men sentenced to life imprisonment with eligibility for parole after 25 years may seem futile. Most, if not all, experience confusion and the profound despair that takes hold of an individual when a judge informs him of his irrefutable new way of life.

LIFE IMPRISONMENT!

In order to maintain a critical attitude toward the answers that some people may attempt to give, we must examine the type of future facing these men whose freedom has been taken away, by asking ourselves one question, "What goes on in the mind of someone who hears the words that impose a new, totally abnormal existence on him for the rest of his life?"

Clearly, at the very moment this type of sentence is handed down, it is pointless to talk about the possibility of parole after a mandatory minimum 25-year period of incarceration, because it is never more than a hypothetical possibility.

Having lived through the experience, we can testify that at that precise moment there is absolutely no light at the end of the tunnel. The abyss of despair into which

the newly convicted person feels himself falling seems to be an increasingly immense void that he is powerless to avoid.

A man thus sentenced is immediately and totally disillusioned and loses any zest for life that he may have had.

What solution remains other than physical destruction, i.e. death? Let us be honest, in the mind of a person sentenced to life imprisonment, the death penalty has never ceased to exist. The intent now is to let him act as his own executioner when he can't take it anymore. In any case, his sentence has already condemned him to a slow and unrelenting moral and spiritual death.

Very few men in this category succeed in mustering the strength and courage needed to carry out the act of physical self-destruction, which is interpreted as cowardice.

Those who remain, and they are legion, must continue to exist. A man deprived of physical freedom cannot really say that he is living. He exists, nothing else.

Life imprisonment is certainly the worst punishment, man's worst nightmare, because it destroys what was most vital in him: HOPE! We can testify that, to a person condemned to life imprisonment with eligibility after 25 years, the word "HOPE" no longer has any meaning, and despair sets in.

What is to be done? Are there any solutions?

Cut off from normal life, a person sentenced to life imprisonment no longer has any hope of returning to it; if he should go back to it, once he has served his mandatory period, he continues to suffer the consequences of the sentence to the end

of his days. In the meantime, his life in prison bears no resemblance to his past life. He continues to breathe, eat, drink, hear, and see, paces in circles aimlessly and without motivation, sleeps less and less, and increasingly misses love and affection; he is not in a position to assume the least responsibility, that was taken away as soon as he was imprisoned.

In his prison, everything is decided for him, on his behalf and in his name. All sense of humanity and dignity is taken away from him. He is even deprived of his right to privacy. With time, good feelings are exhausted, disappear and give way to more aggressive and hateful feelings full of rebellion and suffering; these can easily lead to violence,since he seems to have no other outlet, blinded as he is by the interminable length of his sentence, unless.....

To him, life imprisonment really, and increasingly, seems to be a bottomless pit of despair. He has lost all capacity to think rationally.

Time takes its toll.

How can he think of rehabilitation if all his good habits are now undermined by incarceration in a clearly unfavourable setting and environment?

How can he believe in rehabilitation when nobody else does, despite the basic principle of criminology which advocates that a resident should be allowed to evolve in a setting and an environment similar to those that, in theory, he will one day rejoin?

What use is exemplary behaviour? What use is learning a trade that, in any case, will meet no standards and that no one will allow him to practice later? What

good is it to respect the rules of society in a setting that challenges and denies them, where the only law is retaliation, where normal social principles are rejected, and where the resident is probably stuck for good.

The possibility of eventual parole is so remote and inaccessible that the person serving a life sentence cannot even imagine it even if, in theory, it is a continuation of the sentencing process. Because whatever happens to the lifer, he will always bear the scars of the perpetual nature of his imprisonment.

How can the situation be remedied?

Are there alternate solutions?

To cope with the reality that faces a man imprisoned for most of his future life -- something he can never forget -- requires going back to basics and trying to fill each moment with a broad variety of activities that correspond to his immediate needs: how to deal with the reality that blinds him the moment he wakes up. As another day of incarceration begins, he wonders if it will be as bleak as yesterday. He doesn't know if it will come to an end or how it will end, it already sees like another eternity.

He must face up to the facts. It is unfortunate but, for the person sentenced to life imprisonment, prison is his HOME! This is the sad reality.

The following is a list of situations that we believe to be crucial:

- Length of the sentence to be served: this creates a situation of powerlessness which needs to be remedied by both sides.

- Total lack of programs for residents serving life sentences: after 9 years the correctional system feels completely unable to administer the sentences, but does not know what to do with the people entrusted to it.

- Serious malaise on the part of administrators and personnel with respect to lifers; the situation might be linked to lack of policies; everything is confused.

- Periods of eligibility for parole: major increase in the time spent in prison before becoming eligible for programs of temporary absence with and/or without escort, limited day parole and day parole; eligibility for all programs begins on the same date, i.e. 3 years before full parole.

- Outright reticence by the administrators and officers in charge of the N.P.B. to apply various temporary absence programs, and the increasingly tough eligibility conditions.

We repeat that our aim is certainly not to analyze this hardening of position or determine the reasons underlying it. We can only observe the consequences and, we wish to emphasize this, they are disastrous. This toughening of the law and conditions of custody destroys legitimate human hope and produces a number of results.

- An unhealthy climate of insecurity resulting in increased tension within the prison environment

- A serious increase in the risk of escape, with or without violence,by individuals or groups

- The taking of hostages and suicide operations

- A significant increase in the number of suicides is inevitable among prisoners eligible after a strict period of 25 years

- More or less violent demonstrations by small groups or by much larger groups (strikes, sabotage, riots)

- Increasing possibility of murder, not only among inmates, but also involving staff members...

- A number of other major and equally disastrous consequences

OBJECTIVES

Our overriding objective is to give back to the lifer the glimmer of hope that faded when he was suddenly faced with the reality of sentence pronouncement. When the judge solemnly issues a life sentence, there is no reaction, your blood freezes in your veins, and you turn into a slab of marble, a robot being moved from place to place. From that moment, it is not long until the person sentenced to life imprisonment realizes that he is a dead man, who dies yet a little more every day! Each time his mind or soul remembers what it is to live. He is cut off from normal life but he still sees, hears, and cries out. He feels his body clinging to the life that left its mark on him, a promise that never delivers, an unrelenting torture, with a deep conviction that he can never go back.

This is the most grotesque form of human deterioration: it is not caused by a mistake of nature, it was coldly designed by man. It does not blind, does not cut off an arm or a leg. It amputates the individual's desire to live, his intelligence, his raison d'être.

Prison is an abominable lie which, repeated for twenty-five years, leads to revolt. It hopes to convince the prisoner that the universe can be reduced to the four walls of his cell, but....

Radio, television, and the newspapers taunt him with all the marvels of the life inaccessible to him. When his father, mother, wife, children, or friends come to visit him, to love, encourage, and support him, their mere presence reminds him that outside, beyond the walls, life goes on without him and will continue to do so. He must resolve to abolish love, because he pays for the few minutes of love each week

with long hours of loneliness that begin when he returns to the coldness of his cell. He knows that this love comforts him, helps him to survive, promises him a happy life when he regains his freedom...But God, no! What good is it? There will never again be freedom for him. He cannot understand what is happening to him, the wall that is crushing him with a weight of twenty-five years.

Where can the inmate who is in prison for a minimum of twenty-five years find the least motivation to live? How can he be convinced to work at learning a good trade? He will never practice it. How can he be encouraged to improve his behaviour, to look inside himself and to correct his faults? There will never be anyone beside him to love him, to compliment him. How can he be told to set himself an aim in life? He is dead. Why learn to respect the rules of society if he will never return to it? Why fill the gas tank of a car that no longer has an engine? All good human feelings wear out and disappear from prolonged contact with concrete and steel. When goodness has shriveled, when love is snuffed out, there is nothing left in a man's heart but hatred, and hatred nourished by suffering leads directly to the most horrible type of violence.

What can be done to give hope back to those who are already sentenced to life imprisonment, and to ensure that in the future other individuals will not fall into the same dark despair?

1) BY ABOLISHING THE FIXED SENTENCES IMPOSED BY THE COURTS

When he declares an individual guilty of a particular offence, the judge performs exactly the role assigned to him by the law. Before an individual accedes to this prestigious position, he receives a solid legal education, pleads hundreds of cases

before the courts, and demonstrates an acute sense of justice. He is experienced and capable of determining, on the basis of the rules of law governing the application of evidence in criminal matters, the guilt or innocence of the individual on trial. To some extent he acts as a referee for the litigation before him. Once the facts are demonstrated, he must verify whether or not the law was violated by the accused and, if it was, whether or not it was done deliberately. If he decides in the affirmative, he finds the accused guilty; otherwise he must acquit him.

However, from the moment a judge imposes a definite sentence on an individual guilty of an offence, he greatly exceeds the limits of his jurisdiction and, worse still, annihilates any chance of personal rehabilitation in the offender.

Let us first examine the question of his jurisdiction. In Canadian criminal law, pronouncement of a sentence involves two different aspects: punishment and remedy. A sentence is punishment because the offender is deprived of his freedom following his offence; it is remedy, because during incarceration, he is supposed to follow a rehabilitation program aimed at reintegrating him into society with new social attitudes.

It is normal for the judge to administer the punishment because he is the referee of the debate. But as a remedy, the sentence he pronounces is based on no concrete foundation. How can he decide that an individual will be rehabilitated after two, five, ten or 25 years in prison? Does he suddenly have divine insight into the direction and time frame of a human being's personal development? We don't think so. His knowledge of psychology and psychiatry are elementary at best, and do not qualify him to decide that an offender will not repeat the offence at the end of his sentence. Current results speak for themselves: the remedies administered by judges

are ineffective in more than eighty per cent of cases. The judge is a legal expert, not a specialist in human behaviour. He can decide to remove an individual from society; he must not decide when the individual is ready to return.

> The statement of prison rights states that: a criminal sentence is an arbitrary unit; it must be broken down into its components; law writers were right to distinguish between legislative level (to classify acts and assign sentences to them), and decisional level (to impose the sentences); the task today is to analyze the second level; it is essential to define what is properly judiciary, to assess people rather than actions, to measure the intentions that have such impact on the morality of human actions and, if possible, rectify the assessments of the lawmakers, and give authority to the judgement of the penitentiary, perhaps the most important. The court's assessment is only a way of pre-judging, because an agent's morality can only be evaluated under stress. The Judge's assessments require mandatory monitoring and adjustment, and the penitentiary must provide them.[1] (Ch. Lucas, De la réforme des prisons, II, 1838, p. 418 422).

Now let us see how the fixed duration of a sentence destroys the chances of self-examination by the offender. It has already been explained, and everyone agrees, that rehabilitation of an offender is feasible only if he himself is willing to be rehabilitated, that it is necessary to educate him and arouse his feelings of responsibility for his current situation.

So there it is. Fixed sentences hinder the awakening of responsible feelings in the offender. To facilitate your understanding of the situation, let's take a typical case, and let's call him André.

Let us say that André is a young offender who finds himself before the court, accused of armed robbery. The evidence is well-supported; the defence is rather weak; there is no doubt as to his guilt, and André is found guilty. The judge sentences him to five years in prison. By analogy, one could interpret the judge's

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[1]Translator's note: unofficial translation. According to the National Library, this text has never been translated officially.

words thus: "André, after consideration, I have come to the conclusion that your are ill, and so I order you to stay in bed for five years, after which to may get up, but not before, regardless of whether you have recovered or not."

As medical treatment this would be sheer madness, right? Nevertheless, this is exactly what happens when a sentence is administered.

How does our friend André react to his sentence? Upon entering the penitentiary, he is still under the shock of his conviction and does not realize the punishment inflicted upon him. His attitude remains the same: the judge is an enemy, the guards are enemies, the people who try to make him regret his act (e.g. classification officers, criminologists, psychologists) are all enemies and, moreover, hypocrites who want to know his life history.

In his mind, his sentence is nothing but a punishment that he must bear because he was unlucky. He gambled, he lost, and he must pay up...

After a few weeks of worry in a strange and hostile world, he has learned a little and become familiar with the prison routine. His new friends have taught him that he must avoid any contact with "the others", i.e. those who keep him prisoner, and the hypocrites who pretend to help him, but who, in fact, try to brainwash him so that he will become an honest citizen. He only knows that his robberies were perpetrated at the expense of these people, and so they must in fact be enemies like the others. Therefore, it is out of the question that he become like them: he must fiercely resist any attempt to change him.

But it never enters his mind that his period of incarceration could be used as a remedy, that it might enable him to reconsider his system of values and modify his

behaviour to something different from the incident that led him to prison. What's the use? He already has his own ideas concerning life and he has no "interest" in pursuing a different path. Whether he becomes a good citizen or remains an offender is relatively unimportant to determining the date of his release; at the most he may lose early parole; this slight disappointment is largely compensated by the reputation as a tough guy on which he prides himself. It is better not to change.....

After all, he says to himself, I only have five years to serve. The law stipulates that I will be released after two-thirds of my sentence at the latest, and if I play it close to the chest, without compromising myself, the National Parole Board will grant me parole when I have served one third of my sentence. It's not too bad, the whole thing is a gas!

He accepts his PUNISHMENT. Where is the personal motivation for REHABILITATION in this kind of thinking?

In fact he remains deaf to all who urge him to reconsider his way of life; this is perfectly normal because he does not see the intentions underlying what they say. There is never any communication and, whenever a socially aware lifestyle is suggested, the offender is determined to resist such enemy manoeuvres. Without the personal motivation essential to self-examination, advice from a classification officer or other expert is simply seen as an annoyance, and inspires no trust. All he needs to do is hang on until he is released; then he will be able to act as he pleases without anyone being able to object....Until the next arrest. And the cycle begins again.

The behaviour described above is typical of the majority of offenders serving short and medium sentences. It is obvious that very few of them benefit from a period of incarceration, even a short one. Such success as there is due to individual strength of character; the present system, which does nothing to motivate offenders to improve themselves, is completely ineffective. Short and medium sentences are simply stumbling blocks on the road to crime; they temporarily inactivate the offenders, who use the time to refine their working methods and correct past mistakes before returning to their marginal activities.....

In this respect, very long sentences seem at first sight to have some advantages. When an individual is given a life sentence, together with a clause stipulating no parole before twenty-five years, the psychological impact is generally sufficient to create in the inmate's mind a climate favourable to genuine self-examination. The day following his sentencing, any individual realizes that his life is completely shattered and would enthusiastically agree to commit himself fully to a long-term rehabilitation program, if he could find the least interest in it. Unfortunately, the benefits of the favourable situation created by the psychological impact of a heavy sentence are wiped out by the ravages caused by the despair that comes with the realization that all his efforts will come to nothing; he will be imprisoned for at least twenty-five years, regardless of his attitude. And we know very well to what extremes a man in the depths of despair may go.....

2) <u>BY REPLACING PRONOUNCEMENT OF SENTENCE WITH THIS SIMPLE FORMULA</u>

Mr. X, you have been found guilty of the following offence (describe the offence). Therefore, you can no longer live freely in society and I entrust you to the

Canadian Penitentiary Service, which will see to it that you are released as soon as you have demonstrated your fitness to rejoin the ranks of society and take your real place as a citizen.

In this way, it would be possible to attain the two fundamental objectives that imposition of a sentence must strive for.

a) The judge deprives the offender of his freedom. This is the punishment following the offence committed.

b) Personal interest and a willingness to play an active part in a rehabilitation program awaken automatically in the mind of the offender. This is easily explained: he himself must assume responsibility for demonstrating that he is fit to rejoin the ranks of society and respect its laws. The length of his punishment is directly linked to his personal development.

Strangely enough, the situation is similar to that of the cancer patient who cheerfully accepts the advice of the doctor who hopes to cure him. In the same way, it is in the interest of inmates to pay attention to the views of the various specialists assigned to their rehabilitation; a negative attitude based on resistance will only delay rehabilitation.

Even those who engage in the process of personal self-examination reluctantly would end up benefiting from this system. Most inmates would find themselves caught in their own traps.

Although the offender might not begin with a sincere desire to upgrade his value system, he would soon participate fully in the process that his status as prisoner requires, in an effort to convince those in charge of him that he fully understands the inadmissibility of his behaviour. To convince them, he must progress and move

through each stage of a self-imposed program with the help and supervision of specialists experienced in development guidance.

The most serious shortcoming in the current prison system would be overcome, and genuine contact would be established between the offender and those who really wish to help him. The resistance based attitude of offenders which has paralyzed all attempts to bring the two factions closer together would be broken down, and implementation of the major theories of rehabilitation -- some of which are very valid -- would finally produce the hoped for results.

At each stage of his development, whether he is aware of it or not, the offender would broaden his horizons, explore different avenues, become aware of his identity and personal worth, and discover the benefits that come with trusting himself and others; his sense of responsibility would grow as his personal development unfolds. As destructive ignorance gradually gave way to true understanding, the day would come when, to his surprise, he would find himself a different man, a real man! That day would be the turning point. The offender would understand that true wealth does not lie in someone else's strong box, that life is the most precious possession that we can enjoy on this earth and that happiness is born out of self-respect. When a man acquires self-respect, he also learns to love himself, to appreciate himself as he is. On discovering all these new feelings, he would express them toward others, and his propensity for delinquency would disappear together with the ignorance that was its root cause.

What the criminal at first saw as a mere game played to serve his criminal ends, would become genuine and frank communication and, when it was completed, he could enjoy his freedom, finally unburdened of his frustrations and hatred of his fellow-men.

A new man would return to society, prepared to make his small but honest contribution.

This new conception of the prison system has one telling advantage: it promotes in all offenders, without distinction, an interest and a desire to react positively.

Those who have currently lost all hope (those sentenced to life imprisonment with eligibility after 25 years), would know that their lives are not ruined, that they can still resume a new, more harmonious, life if they are willing to put the necessary time and effort into it. Who knows what fabulous results might be achieved if these men were motivated by a hope which the present system totally denies them? A man who is offered such a chance no longer seeks to sow violence around him.

When the Criminal Code stipulates that a given offence be accompanied by a sentence that does not exceed five years and that another offence deserves a firm twenty-five year minimum sentence, we necessarily conclude that the lawmaker, in his manifest desire to rehabilitate offenders, thinks that, at the end of five years, the first offender will no longer represent a danger to society, and that the second must rot in prison for twenty-five years before the danger disappears. The entire range of sentences embodied in the Criminal Code is based on the concept of the objective seriousness of the offence.

At the technical level, judges, whose mandate consists of applying the standards decreed by the Criminal Code, enjoy some latitude and can sentence offenders to a sentence lighter than the stipulated maximum. For example, an individual who pleads guilty to an offence for which the sentence may not exceed five years is often given a three-year sentence. The latitude given to judges for almost all offences except

murder enables them to go beyond the objective aspect of the offence and weight the verdict by considering the particular circumstances that led the offender to commit the offence. But when murder is involved, the spirit of the law changes completely and the judges have no other choice but to impose the minimum sentence provided for by the Criminal Code: twenty-five years in prison. Two individuals found guilty of the same burglary may very well be sentenced differently: one to five years in prison, because he is considered a hardened criminal, and the other to two years because this is his first appearance before the courts. When murder is involved, a hired killer who makes his living from the death of others is judged according to the same standard as a poor guy who killed, deliberately in the eyes of the law, because of serious emotional disturbance that anesthetized his sense of responsibility and made him lose control of his faculties temporarily.

Why is society, through its legislators, willing to understand and forgive, at least in part, the involuntary aberration of an individual who steals another's property under the effect of despair or temporary depression, while it refuses to extend the same understanding to the despair of a man who kills with no awareness of the horror of his act?

Of course killing is a much more terrible, more radical and more serious act than the mere theft of material goods, but is it absolutely unpardonable? Is it inconceivable for human reason to think that, because of a mental process similar to that which leads a usually honest and upright man to steal to meet the needs of his destitute family, another individual, possessing the same moral standards, might some day be thrown into a deplorable life situation where all his human values are anesthetized? Once on this dangerous slope, he is drawn relentlessly toward an ever

deeper abyss, increasingly devoid of human warmth and filled with misery and anguish. Progressively, subtly, with the naiveté of the prey venturing into the predator's lair, a man loses contact with reality and is engulfed in another world, retiring within himself and inevitably distancing himself from his fellow-men, whom he nevertheless needs desperately.

From the depths of his solitude, he makes frantic appeals for help, but communications have already broken down and no one is in a position to answer his cries, because neither his words, his actions, nor his behaviour reflect his real distress. While suffering gnaws at his heart, the mask that hides the face of pain projects an artificial personality characterized by power, balance and stability. Because the man is sensitive, he suffers more, because he is alone and isolated, he is unable to overcome his inner suffering and ends up denying it altogether. From this moment on, he is no longer his own master, but a victim of overwhelming emotion; his extreme sensitivity toughens until it is harder than steel. Because he is incapable of understanding the nature of the struggle inside himself, his fragmented strength gradually diminishes and his mental balance sways frighteningly. Believing to find refuge in the opposite extremes of his weakness, he becomes aggressive and sometimes violent. He feels that this attitude is not the right alternative, but he is no longer in a position to struggle or fight. He hates himself and, because of this, he hates the whole world and his fellow-men. He is powerless before the blows of destiny that undermine him psychologically. He no longer acts consciously; he reacts to a world in which he no longer recognizes himself, in which he suffers, and which seems to become a dangerous enemy.

In this frame of mind, a man can commit acts of incredible violence, even kill; but where there seems to be premeditation, there is in fact only the culmination of reasoning atrophied by illness. This illness is barely understood by contemporary medical science, because it does not leave any mark on the skin. It is an illness that attacks the soul and is known as neurosis.

A neurotic is not a criminal who must be punished, he is a sick man who needs to be surrounded with understanding and care, not with concrete and barbed wire. One does not bring a drowning man back to life by plunging him in a basin of water. When a man afflicted with a neurosis is pushed to killing someone, he is no longer in control of himself. He is in a state of unconsciousness as dark as that of the drunken driver who strikes a pedestrian. We end up pardoning the drunken driver....Why should the neurotic not be given the chance to recover, and become the thinking man he once was, or perhaps even better?

Whether one agrees or not, the drama goes on every day and the prisons are bursting with individuals who, after committing murderous acts under the influence of a neurosis, find themselves locked up for the rest of their lives like professional killers. Most of these men, in spite of the abominable surroundings in which they must live, learn, at the price of unimaginable suffering and often absolute despair, to recognize the gravity of their errors, determine the exact causes of their illness and undertake a painful recovery. Today, these men know how to love better than many respectable citizens, and their moral values have attained a higher level. More than anyone else, they respect life because it is a valuable possession that was once lost but has been found again.

Since March 1981, has there not been a social integration program for long-term repeat offenders at the Institut Louis Philippe-Pinel? Why could not these men, who were once assets to society and who, as we well know, will never repeat their offences, have a similar program, a program that would enable them to go home, take up their responsibilities, and once again be full members of the community?

We must stop judging mainly in terms of the crime committed, and develop a new, more human and flexible attitude that would give a human being a chance. Judging would be easy if we were all robots responding uniformly to the various stimuli of life; when a machine is destroyed, it can be replaced and that's that. But alas, we are not interchangeable, programmed machines like computers. Each human being represents a unique universe whose inner impulses do not obey any standardized classification. There are no two identical human beings throughout the whole of our planet. How then can one claim that a single standard can determine the fate of a multitude of different individuals? What some cannot accomplish with beatings, others will accomplish with a mere word of encouragement.

Medicine provides us with the best example. Do doctors, entrusted with the noble task of healing mankind, determine beforehand the time required for healing all illnesses? Do they keep a limb in a cast when a fracture heals more quickly than expected? No. They know for a fact that an individual in good physical health can recover more quickly from a serious operation than a weaker person from a mere cold.

Nature is very wise, and what is true at the physical level is necessarily true at the psychological level. Thus it is absurd to arbitrarily set a minimum or maximum

period necessary for rehabilitation of an offender. It would be much better to let each one recover at his own pace.

To sum up: an individual who finds himself behind bars for an offence as serious as murder may well, depending on his intelligence and motivation, psychoanalyze himself and, by reflecting on his past, understand the process which led him to commit this terrible act, and once again become a man of great honesty and goodness. And all this may occur within a relatively short time.

You might reproach us for having neglected the punitive aspect linked to every sentence.

In our opinion, there are two ways of behaving when faced with inflicted punishment. The motivation which leads to punishment reflects either a desire for vengeance or the intention to create a climate conducive to self-examination in the individual being punished. While the latter seems highly laudable and appears to produce favourable results with regard to the problem of delinquency, the former has no raison d'être in a society that claims to be civilized.

Moreover, in whose interest is it to have individuals rot in prison for the rest of their lives? Why must a prisoner who (even in the opinion of experts handsomely paid by taxpayers) no longer represents any risk to society continue to suffer a costly imprisonment which has also become completely useless?

Such imprisonment contributes nothing to the protection of society, because the individual is deemed fit to return to a normal life.

It is not profitable to the victim's relatives who draw no direct compensation of any kind, or to the inmate who sees his life completely shattered because of an act he sincerely regrets.

What is left, therefore, is only the idea of a thirst for vengeance, the satisfaction of seeing a person who has committed a reprehensible act suffer every day. It is inhuman and totally illogical. If the punitive aspect of a sentence is considered in this way, as it is for firm twenty-five year sentences, it is equivalent to saying that no account is taken of the "rehabilitation" aspect: an individual considered fit to regain his freedom at the end of five years must continue to be punished for at least another twenty years. If punishment takes precedence, it destroys everything else, and all the wonderful rehabilitation theories lead to absolutely nothing.

In 1985, at a time when some are fighting fiercely to protect the lives of animals, when others are undertaking extensive campaigns to protest against those who fail to comply with the laws governing the environment, it seems to us that special attention should be paid to human beings, our fellow-men. If it is possible to straighten the trunk of a tree without cutting or uprooting it, all the more reason to re socialize a human being without separating him from society and his loved ones for the rest of his life.

From this perspective, it is important that punishment come second to rehabilitation and not the other way around, as it does now. Punishment has a role to play until the individual undertakes personal self-examination, but only until then. If it continues to be applied beyond that point, it becomes unjust and inhuman, and only generates feelings of vengeance, resentment and hatred.

A prudent doctor stops medication or continues it depending on whether the patient has fully recovered or not. Similarly expiation should cease once the person sentenced has completely changed. Further detention is useless, even inhuman, in someone who has improved; it is also needlessly expensive to the State. (A. Bonneville, Des Libérations préparatoires (Preliminary releases), 1846, p. 6). Sentence length must in justice depend not only on the act and its circumstances, but with the progress of the sentence itself. This means that while the sentence must be individualized, it must be individualized on the basis of the offending individual who is legally liable for his actions and the perpetrator responsible for the offence. It must begin with the punished individual, who is the subject of a controlled transformation, i.e. the individual in detention in the prison system, who has either been changed by it directly or by reacting to it. "It is only a matter of reforming a spiteful person. Once this reform has taken place, the criminal must re-enter society". (Ch. Lucas, quoted in la Gazette des tribunaux, 6 April 1837).

Once the effectiveness of this new proposal has been recognized, it is a matter of entrusting its application to competent people, and above all to people capable of understanding the very important fact that offenders are complete human beings trying to come to grips with behavioural problems that can be corrected if the assistance given them is geared to their real needs.

The attempts to promote participation by offenders must elicit a satisfactory response from the officials whose duty is to guide them along the way to re-socialization. Inmates who listen to the advice of experts and experts who listen to the problems of offenders, now there's a winning combination!

The question has been asked! The answer is up to you....

CONCLUSION

The brief submitted to you was prepared by people now serving life sentences, two of whom are eligible for parole after 25 years, and the third after 20 years. The first has 9 years left to serve, the second has 8 years and the third 6 1/2 years.

From the beginning of our imprisonment we have been told that these sentences make absolutely no sense, are inhuman, barbarian, "harsh and the severity of their consequences disproportionate in relation to the offences for which they are imposed" (Judge Bora Laskin, The Canadian Charter of Rights and Freedoms, p. 393. Beaudoin & Tarnopolsky, The Carswell Company Limited, 1982).

We realize that we are reaching a decisive turning point, that the reform of the Criminal Code is imminent, and that the matter of long sentences will receive careful study. We think that you have been sensitized, that you are aware of the expectations of all those sentenced to life imprisonment. For us, 1986 is a critical year, a year to which we all cling, our one glimmer of hope.

As we said in the background to this brief, the only reason for sentences with 25 years eligibility is policy. We believe that the Law Reform Commission will study the implications of the Act carefully, and arrive at their decisions in a responsible manner. The result that we are hoping for is major relaxation of the Act's application.

If on the other hand, the present Act is toughened or the status quo maintained, no one should be surprised if prisons are sites of hostage takings, major riots, murders of inmates and officials, mass suicides, etc... All persons serving sentences will know that they really have nothing to lose, that they have long been misled, and

that all they can look forward to is slow psychological death; no one should be surprised if they react through the simple instinct to survive. Newspapers will have no reason to complain that the situation in prisons is scandalous or loathsome. You are the ones who will have decided to turn these men into raging beasts.

You are aware of the entire situation. Astronomical sums have been spent on inquiries, on preparing reports, on seeking out the opinion of inmates, and of everyone else. You can easily foresee what will happen.

We will try to distance ourselves as far as possible from this Apocalypse. But as people who have always been involved in all kinds of activities designed to make life more tolerable, more acceptable fo lifers, we will no longer be able to mislead anyone, no longer in a position to calm hot tempers. We will no longer be able to say, "Be patient, the situation will change." You will have decided otherwise.

Please believe us, Gentlemen, that we are not making any threats. We live in and share these cages 24 hours a day and, more than anyone else, we can gauge how much an individual can take, and we can only say to you that "enough is enough". We only wish to make you aware of a situation that we fear as much as you do.

We hope, Gentlemen, that you will pay special attention to this document. To some it may perhaps appear bizarre, but we think that it has a greater chance of success than the present penal system.

Roger Brisson
Chairman

Jean-Louis Lévesque
Vice-Chairman

Michel Dunn
Secretary

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APPENDIX D

PROPOSALS BY THE LIFE GROUP - L'ETABLISSEMENT LAVAL

Recommendations
of the
Life Group -
l'Etablissement Laval (Laval Institution)
to
The Canadian Sentencing Commission

June 1985

RECOMMENDATIONS

1. It is requested that an accused have the right to change the judicial district in which he is tried.

   For example, an accused who lives in Joliette or St-Jérôme, should be entitled to trial in Montreal. The jury would be more rational and less easily influenced by the media.

2. The defence should always argue after the prosecution.

   Inmates would have a stronger impression if being "presumed innocent until proven guilty".

3. Any previous record should not be referred to during trial.

   Inmates feel they are being tried for prior offences that have already been paid for. They feel they are misrepresented and pictured as dangerous men following a set path, which is not always true.

4. Do not re-open the criminal record when the accused decides to testify.

5. For a murder trial, there should be a choice between trial by judge alone, and trial by judge and jury.

6. It is hoped that there will be a return to the 1974 law (i.e. a sentence between seven and ten years) with no death penalty, assuming abolition of the 25-year sentence.

7. What is wanted is a jury made up of professionals or people qualified to act as "jurors".

8. We want neutral professionals who are independent of the correctional or legal system (i.e. psychologists, psychiatrists, social workers).

9. The inmate should have the right to be accompanied by an advisor (professional or other) from the beginning to the end of the trial.

10. We want someone to be made responsible for us, and our cases to be reviewed in order that the results reflect the individual's real involvement in the case, the act, and the imprisonment.

11. The government in power should officially state the various aims of its legal system:

    1) i.e. whether it wants punitive justice or justice intended to protect society, and if it intends to provide measurable concrete procedures for the return of inmates to normal life outside;

    2) that officials of the federal Department of Justice acknowledge the damage done to inmates by a 25-year sentence, devise practical means to help these inmates, and thus create hope for them;

    3) that a public awareness campaign be undertaken to explain to society at large what a sentence is and the living conditions of someone with "eligibility after 10 years", and that parole may be denied an inmate after 10, 15 or 20 years of prison, depending on the case;

4) that preferred indictment (accusation préférentielle) be abolished;

5) that it be made possible for an inmate to be heard by the National Parole Board each year in order to assess:
   a) development of release plans;
   b) follow-up of his program in the institution;
   c) etc...; and

6) that appeal of his case be automatic.

12. Meetings with the victims' relatives or family should be encouraged despite the delicate nature of such a step.

13. Although we are divided in our opinion on the subject and aware of the limitations involved, we propose that the accused be entitled to request that a lie detector (polygraph) be used for Crown witnesses, including police officers.

Representatives of the life group

_____	_____	_____
Chairman	Secretary	Vice-Chairman

APPENDIX E

SOME QUESTIONS RAISED BY THE MANDATE OF THE CANADIAN SENTENCING COMMISSION

Some Questions Raised by the Mandate of the Canadian Sentencing Commission

Maximum and Minimum Sentences

1. What does maximum sentence mean to you?

2. In your opinion, is the maximum sentence set by the law to provide for the worst case often imposed?

   In what cases?

3. If the maximum sentence is not often imposed, would there be any advantage in adding to the Criminal Code maximum sentences in closer conformity to the seriousness of the offence and also closer to the stiffest sentences currently imposed by the courts?

4. Do you think there are offences that are different in seriousness but for which the maximum sentences are identical?

5. If the maximum sentences provided for by law are rarely imposed, can the length of these maximum sentences lead to mistaken ideas among the public?

   In what way? What are the possible consequences?

6. Even if it is believed that maximum sentences are rarely imposed, can their very existence in the Criminal Code, have negative consequences? What are they?

7. What do the minimum sentences specified in the Criminal Code mean to you?

   a) Do you believe that these minimum sentences make it difficult to hand down a sentence in a special case?

   b) Can minimum sentences lead to abuse of power by the police or by Crown prosecutors?

   c) Do they involve unacceptable differences in sentences? In what way?

   d) Do they create any other problems? What are they?

Disparities (or Differences Between Sentences)

It is generally believed that the sentences handed down by courts should be the same for all similar cases. The disparity between sentences is seen as unjust. A distinction is also often made between acceptable and unacceptable disparity: acceptable disparity is that which is justified by the specific opinion found within a community, or by the needs of the accused.

8. To what extent should community opinions be considered?

   To what extent should the needs of the accused be taken into account?

   To your knowledge, do such situations exist and do they cause problems?

9. In your opinion, are there cases where differences between sentences thwart justice?

   If your answer is "yes", are these cases of disparity a source of concern to you, and in what way?

10. Does parole produce unacceptable differences between sentences? If yes: how could the situation be improved?

Plea Bargaining (the "Deal")

11. Do you think that plea bargaining has an effect on the sentencing process, or on the sentences imposed? If yes: in what way?

12. In your opinion, what are the roles of the various participants in plea and sentence bargaining?
    - Role of the accused
    - Role of the police
    - Role of the defence counsel
    - Role of the Crown prosecutor
    - Role of the judge

13. Do you think that the power of the police and the Crown prosecutor regarding plea bargaining should be regulated and controlled?

    Do you think that plea bargaining should be prohibited by law?

    In this case, what would be the consequences for the accused?

14. In your opinion, are several charges often brought either for the same incident, or for several incidents?

    What are the consequences?

Parole, Mandatory Supervision and Remission of Sentence.

15. What do you think of parole and mandatory supervision?

16. Should mandatory supervision be abolished or maintained?

17. Do you think that reduction of sentence for good behaviour is a positive aspect of correctional legislation?

    Should earned remission be abolished or should sentence reductions be granted only to certain types of inmates and only for certain offences?

18. Should parole and sentence remission be abolished and replaced with fixed sentences?

19. According to you, are meetings with parole officers useful to former inmates?

20. Do you think that parole should be submitted to some sort of review and control exercised by judges?

Other Questions

21. In your opinion, are appeal procedures useful?

    Are courts of appeal necessary to redress injustice?

22. Should the law concerning suspended sentences (probation) be changed to allow the judge to specify the length of the sentence he is suspending?

23. **In your opinion, does the space available in prisons and penitentiaries have an effect on the length of the sentence handed down by the judge?**

24. **Do you agree that the main aim of sentences is to protect society?**

25. **Are there any other points in the Commission's mandate that you would like to discuss?**